

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

February 22, 2018 Access Charge
Tariff Filing

Iowa Network Services, Inc. d/b/a
Aureon Network Services
Tariff F.C.C. No. 1.

WC Docket No. 18-60

Transmittal No. 36

**OPPOSITION OF IOWA NETWORK SERVICES D/B/A AUREON
NETWORK SERVICES TO AT&T SERVICES, INC.'S MOTION TO
AMEND PROTECTIVE ORDER AND FOR DECLARATORY RULING**

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INTRODUCTION AND SUMMARY

AT&T Services Inc. (“AT&T”) has failed to meet its burden of demonstrating that good cause exists to modify the Protective Order in place in this investigation.

Recently, when AT&T was the subject of an investigation of the reasonableness of its own tariffs, AT&T’s confidential information was protected by a Protective Order similar to the one in place here. *See infra* Part IV. Namely, non-lawyer employees of other parties were not given access to AT&T’s highly sensitive information provided in that proceeding.

Now, however, when the shoe is on the other foot, AT&T seeks to force Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”) to provide highly confidential information to the same types of non-lawyer employees of both AT&T and other companies – *i.e.*, the same types of people who were not permitted to review AT&T’s confidential data – so long as those employees assert that they are not involved in “competitive decisionmaking” at their companies. AT&T claims that this differential treatment is appropriate because a few select AT&T employees were able to review certain Aureon data related to Aureon’s regulated “Access Division” under a Protective Order that AT&T itself proposed in AT&T’s closed complaint proceeding (No. 17-56) against Aureon (“Complaint Proceeding”).

AT&T’s Motion should be denied because:

- The information to be produced here is far broader than that produced in the Complaint Proceeding and – importantly – includes highly sensitive information from Aureon’s unregulated, competitive “Network Division” that was not produced in the Complaint Proceeding;
- The people who would be permitted to review the information at issue would include not just a small, closed set of select AT&T personnel but all similarly situated personnel of any interested party;
- The information to be produced includes not merely Aureon’s information but the information of third parties;

- The “competitive decisionmaker” standard upon which AT&T relies to justify its sweeping request was intended to gauge in-house lawyer access, not access by non-lawyer personnel of a company’s business rivals; and
- AT&T’s own information in a recent, similar tariff investigation was protected at a similar level of protection as the Protective Order in place here.

While there is no basis to permit disclosure of Aureon’s proprietary information in the manner that AT&T demands, Aureon is willing, as an accommodation to AT&T, to relax the use restriction in the Protective Order governing the Complaint Proceeding to enable the four AT&T employees – and only those employees – who were permitted access to certain documents in that proceeding to use that information in this investigation. It also is willing to agree to a requirement that each party provide one copy of any supporting information filed with the FCC, including any confidential information, to each other party who has signed at least one Acknowledgment on the same day that that supporting information is filed with the FCC. *See* AT&T Mot. at 13. Given the strong basis for maintaining the existing protections over Aureon’s highly sensitive proprietary data and Aureon’s willingness to accommodate AT&T as described in this paragraph, AT&T’s Motion should be denied.

I. AT&T HAS FAILED TO MEET ITS BURDEN OF ESTABLISHING THAT GOOD CAUSE EXISTS TO MODIFY THE FCC’S PROTECTIVE ORDER IN PLACE IN THIS PROCEEDING.

AT&T suggests that Aureon bears the burden of showing that the FCC’s Protective Order entered in this investigation should remain in place (AT&T Mot. at 8), but the opposite is true. It

is well-established that “[t]he party seeking modification of an existing protective order bears the burden of showing that good cause exists for the modification.”¹

As shown in more detail below, AT&T has failed to meet its burden of showing that modification of the FCC’s Protective Order is supported by good cause.

II. AT&T’S RELIANCE ON THE LOOSER CONFIDENTIALITY PROTECTIONS IN ITS COMPLAINT PROCEEDING IS MISPLACED; THIS INVESTIGATION INVOLVES MUCH MORE COMPETITIVELY SENSITIVE DATA THAT MAY BE ACCESSED BY FAR MORE PARTIES.

AT&T’s reliance upon the Protective Order in the Complaint Proceeding to support even broader access by employees of Aureon’s business adversaries in this tariff investigation is misplaced for several reasons.

First, the information that the FCC has required to be produced in this tariff investigation is far broader than the information provided in the Complaint Proceeding. In the Complaint Proceeding, Aureon provided information related exclusively to its highly regulated Centralized Equal Access service tariffs – *i.e.*, from its “Access Division” – where broader access is often warranted. Here, by contrast, Aureon has also been required to produce highly confidential information related to its unregulated competitive long-distance business – *i.e.*, from its “Network Division” – where it competes on the open market for customers. Specifically, Aureon has been required to provide detailed information regarding its revenues, assets, capital costs, other expenses, and tax information related to its fiber lease business, which has been detariffed by the FCC, is not subject to a cost studies filing requirement, and is not the subject of a tariff

¹ *United States v. All Assets Held at Bank Julius Baer & Co., Ltd.*, 312 F.R.D. 16, 19 (D.D.C. 2015); *accord United States v. Aetna Inc.*, Case No. 1:16-cv-1494 (JDB), 2016 WL 8738422, at *2 (D.D.C. Sept. 22, 2016) (“[T]he party ... which seeks to modify a protective order bears the burden of showing that good cause exists to justify the desired change.”); *United States ex rel. Pogue*, No. Civ. 99-3298, 01-MS-50 (MDL) (FCL), 2004 WL 2009414, at *2 (D.D.C. May 17, 2004); *Alexander v. FBI*, 186 F.R.D. 54, 57 (D.D.C. 1998).

investigation.² That confidential information was not disclosed in the prior proceeding and certainly should not be made available to non-lawyer employees of Aureon's business rivals, whether they claim to be involved in competitive decision-making or not.

Second, Aureon has been required to provide information in this investigation implicating confidential information of third parties that it was not required to produce in the Complaint Proceeding. Specifically, the FCC has directed Aureon to provide actual historic traffic data at a very granular level – as opposed to the high-level traffic projections that it provided in the Complaint Proceeding.³ This information will enable AT&T and other long-distance carriers to assess, in greater detail, their own respective market shares of Aureon's overall traffic over time, which they could use to their own business advantage. More restrictive protection of this information therefore is warranted in this proceeding than the protections in place in the Complaint Proceeding.

Third, to exacerbate the risk of improper use of the sensitive data implicated here, any interested party may participate in this investigation, whereas only AT&T was able to review the confidential information produced in the closed bilateral Complaint Proceeding. Indeed, Verizon already has indicated its intent to participate and to access this sensitive information by submitting Acknowledgments of Confidentiality from two of its in-house lawyers.⁴ Other carriers will no doubt follow. Therefore, under AT&T's sweeping proposed relaxation of the Protective Order, the highly sensitive Aureon information produced here would risk disclosure

² See Order Designating Issues for Investigation, WC Dkt. No. 18-60, Transmittal No. 36, at 8-9 (FCC Apr. 19, 2018).

³ See *id.* at 10-11.

⁴ See Letter from C. Groves to M. Dortch, *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Dkt. No. 18-60 (Apr. 23, 2018).

not just to AT&T employees but to employees of any other participating business rivals of Aureon based solely on their *ipse dixit* claim that they are not involved in competitive decisionmaking for their company.

Fourth, the Protective Order in the Complaint Proceeding was not forced on AT&T – it was only entered after AT&T had specifically agreed to it. That Order was more restrictive than the order that Aureon had proposed to govern that proceeding and permitted parties to object to the disclosure of “Highly Confidential” information to the four party employees identified in the Order for each company.⁵ In other words, even in a proceeding involving somewhat less sensitive data disclosed to fewer individuals, more protection was in place than what AT&T seeks here.

In sum, the Protective Order entered in the more limited and closed Complaint Proceeding provides no basis for altering the Protective Order already entered in this proceeding and thereby imperiling the confidentiality of Aureon’s sensitive business data.

III. THE “COMPETITIVE DECISIONMAKING” TEST CITED BY AT&T WAS CREATED TO ASSESS IN-HOUSE LAWYER ACCESS, NOT EMPLOYEE ACCESS; IN ANY EVENT, AT&T’S KEY EMPLOYEE SEEKING ACCESS ROUTINELY HAS BEEN INVOLVED IN AT&T’S COMPETITIVE STRATEGY.

Apart from the difference between the closed Complaint Proceeding and the open tariff investigation, the very notion of permitting non-lawyer business executives to review confidential information of business adversaries is inconsistent with the very reason why courts crafted the “competitive decisionmaking” test in the first place. That test was specifically crafted to gauge whether in-house lawyers – not non-lawyer business personnel – should be given access

⁵ See Letter from L. Griffin to J. Bendernagel and J. Troup & Protective Order ¶ 8.b, *AT&T Corp. v. Iowa Network Servs., Inc.*, Proc. No. 17-56, Bureau ID No. EB-17-MD-001 (Feb. 24, 2017) (Ex. A hereto).

to a business rival's confidential information. In-house lawyers typically function primarily as legal advisors rather than as business strategists, whereas virtually by definition, the key role of non-lawyer company employees is to assist the company in maximizing its profits and gaining marketplace advantage over its competitors. Moreover, lawyers are subject to stringent ethical and professional obligations that provide further protection against inadvertent disclosure of confidential information but that do not apply to non-lawyers. Thus, the "competitive decisionmaking" test itself is far less suited to apply to non-lawyers in the manner that AT&T seeks to use it.

The seminal decision discussing this test is *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984).⁶ Under *U.S. Steel* and its progeny, the basis for concern about permitting even in-house counsel to review the confidential information of others is "[t]he inescapable reality ... that once an in-house counsel acquires highly confidential information, that individual cannot rid herself of that knowledge: she cannot perform a prefrontal lobotomy on herself, as courts in various contexts have recognized."⁷ "Once the Highly Confidential information in this case is disclosed, 'the bell cannot be unrung.'"⁸

⁶ See *Volvo Penta of the Ams., Inc. v. Brunswick Corp.*, 187 F.R.D. 240, 243 (E.D. Va. 1999) (describing *U.S. Steel Corp.* decision as having "done much to make the 'competitive decisionmaking' factor the *sine qua non* of the in-house counsel analysis, regardless of other factors that potentially garner in favor of restricting in-house access"); *Intervet, Inc. v. Merial Ltd.*, 241 F.R.D. 55, 57 (D.D.C. 2007) (describing *U.S. Steel* as "[t]he leading authority" on barring access to confidential information to in-house counsel "who can be described as competitive decision-makers"); *United States v. Sungard Data Sys., Inc.*, 173 F. Supp. 2d 20, 23 (D.D.C. 2001) (describing *U.S. Steel Corp.* as "what is now considered the leading case in the area").

⁷ *Silversun Indus., Inc. v. PPG Indus., Inc.*, ___ F. Supp. 3d ___, ___, No. 17 C 4346, 2017 WL 512321, at *7 (N.D. Ill. Nov. 6, 2017); *accord FTC v. Advocate Health Care Network*, 162 F. Supp. 3d 666, 670 (N.D. Ill. 2016).

⁸ *Id.* at *8 (quotation marks and citation omitted); *United States v. Aetna Inc.*, Case No. 1:16-cv-01494 (JDB), 2016 WL 8738420, at *5 (D.D.C. Sept. 5, 2016) ("Providing Defendants' in-house

“Involvement in ‘competitive decision making’ is the oft-cited most critical factor weighing in favor of denial of access [to in-house counsel].”⁹ “The primary concern underlying the ‘competitive decision-making’ test is not that lawyers involved in such activities will intentionally misuse confidential information; rather, it is the risk that such information will be used or disclosed inadvertently because of the lawyer’s role in the client’s business decisions.”¹⁰

The term “competitive decision-making” itself was described in *U.S. Steel* “as shorthand for a counsel’s activities, association, and relationship with a client that are such as to involve counsel’s advice and participation in any or all of the client’s decisions (pricing, product design, etc.) made in light of similar or corresponding information about a competitor.”¹¹ “[T]he list of competitive activities identified in *Whole Foods* [citing *U.S. Steel*] was meant to be illustrative and not exhaustive.”¹²

“[W]here in-house counsel are involved in competitive decision-making, it may well be that a party seeking access should be forced to retain outside counsel or be denied the access

counsel with access to the confidential information of other insurers undoubtedly risks giving Defendants an unfair advantage in competition in the insurance marketplace should the counsel later rely upon that knowledge when advising his or her client with regards to a competitive situation.”).

⁹ *Silversun Indus.*, 2017 WL 512321, at *3 (alteration in original; citations and quotation marks omitted).

¹⁰ *FTC v. Sysco Corp.*, 83 F. Supp. 3d 1, 3-4 (D.D.C. 2015).

¹¹ *U.S. Steel Corp.*, 730 F.2d at 1468 n.3; accord *FTC v. Whole Foods Mkt., Inc.*, Civil Action No. 07-1021 (PLF), 2007 WL 2059741, at *2 (D.D.C. July 6, 2007).

¹² *Sysco Corp.*, 83 F. Supp. 3d at 4.

recognized as needed.”¹³ For that reason, courts have not hesitated to exclude in-house lawyers found to be involved in competitive decision-making.¹⁴

Importantly, a key basis cited by courts for even considering whether to permit in-house lawyers to review the confidential information of others instead of simply imposing a blanket preclusion is that “in-house counsel are officers of the court, are bound by the same Code of Professional Responsibility, and are subject to the same sanctions.”¹⁵ In one case, for example, the court specifically cited “the all-important codes and model rules of professional conduct, coupled with the specter of attorney sanctions or even disbarment,” as a basis for “allay[ing] many of [the objecting party’s] concerns of intentional or unintentional disclosure of its information to [the adversary’s] personnel.”¹⁶

When in-house lawyers are permitted to review the confidential information of others, courts routinely impose harsh sanctions, including disbarment and steep fines, if a lawyer improperly uses or discloses that information in breach of his or her heightened professional and ethical obligations. Indeed, numerous courts have specified a sanction of \$250,000 – paid personally by the lawyer – coupled with a recommendation of suspension or disbarment:

¹³ *U.S. Steel Corp.*, 730 F.2d at 1468.

¹⁴ *See, e.g., Sysco. Corp.*, 83 F. Supp. 3d at 4 (denying in-house lawyer access to confidential materials because he “is too close to Sysco’s competitive decision-making functions”); *Silversun Indus.*, 2017 WL 512321, at *6 (denying in-house counsel access where lawyer attends Directors’ meetings in an ‘advisory capacity’ and obviously interacts with [party’s] decision-makers on a significant and substantive level”); *United States v. Dentsply Int’l, Inc.*, 187 F.R.D. 152, 161-62 (D. Del. 1999) (barring in-house counsel access to confidential information despite party’s assertion that lawyer was not involved in competitive decisionmaking).

¹⁵ *U.S. Steel Corp.*, 730 F.2d at 1468.

¹⁶ *Volvo Penta of the Ams.*, 187 F.R.D. at 245, 254 (permitting in-house counsel access to confidential materials because “the same ethical and professional dictates discussed in *U.S. Steel Corp.* adequately safeguard against the risk of disclosure to other Brunswick personnel”).

Any violation of this Order will be deemed a contempt and punished by a fine of 250,000. This fine will be paid individually by the person who violates this Order. Any violator may not seek to be reimbursed or indemnified for the payment the violator has made. If the violator is an attorney, the Court will deem the violation of this Order to warrant the violator being sanctioned by the appropriate professional disciplinary authority and Judge Freidman will urge that authority to suspend or disbar the violator.¹⁷

Courts discussing the “competitive decisionmaker” test for determining access to confidential information routinely do not even consider whether non-lawyer company employees should be permitted access to the confidential information of their competitors – it generally is presumed that no such access should be given. The paucity of discussion of non-lawyer principals’ access to highly sensitive information in the case law is not surprising – the very function of a company’s business employees is for those employees to help make their employer competitively profitable. Moreover, non-lawyers are not subject to the same ethical and professional obligations and related sanctions that apply to lawyers.

Where courts have discussed the possibility of non-lawyer employee access to the confidential information of competitors, they routinely have made clear that disclosure to such principals creates too great of a risk of competitive harm to be permitted. For example, the U.S. Court of Appeals for the D.C. Circuit held that a district court had abused its discretion in ordering the disclosure of a company’s confidential information submitted in a Small Business Administration application to another company’s principals and employees.¹⁸ The court found

¹⁷ *Whole Foods Mkt.*, 2007 WL 2059741, at *3; *Intervet*, 241 F.R.D. at 57 (adopting same provision); *Sysco Corp.*, 83 F. Supp. 3d at 5; *Sungard Data Sys.*, 173 F. Supp. 2d at 21-22, 26 (limiting access to only two in-house lawyers per side, imposing harsh sanction for violations, and permitting consultant access only if such consultants “are not employed or affiliated in any other way with any defendant or competitor”); *Advocate Health Care Network*, 162 F. Supp. 3d at 673-74 (denying access to in-house where “the confidentiality order ... has no teeth”).

¹⁸ *Diamond Ventures, LLC v. Barreto*, 452 F.3d 892, 900 (D.C. Cir. 2006).

that the district court had overvalued the company’s “purported need for an expert to review the” confidential information and “erroneously discounted [company’s] confidential and competitive interests in” information at issue.¹⁹ Similarly, another court observed that “[d]isclosure to employees of [a party] generally of a nonparty competitors’ sales and marketing plans, financial forecasts, margin, pricing, cost and customer information, etc., would obviously constitute a clearly defined and serious injury to all nonparties.”²⁰

Even if the “competitive decisionmaker” test had been intended to apply to non-lawyer employees, unsupported *ipse dixit* regarding an employee’s supposed lack of involvement in competitive decisionmaking – such as AT&T’s outside counsel has offered – is insufficient to establish that claim.²¹ In any event, the key employee for which AT&T seeks access – Daniel Rhinehart – has been pervasively involved with AT&T’s competitive decisionmaking. Mr. Rhinehart has a Master’s in Business Administration and has been employed by AT&T or its predecessors for nearly 40 years, taking on increasing responsibility within the company over

¹⁹ *Id.* at 899.

²⁰ *Dentsply Int’l*, 187 F.R.D. at 159.

²¹ *See, e.g., Advocate Health Care Network*, 162 F. Supp. 3d at 674 (observing that *ipse dixit* of the defendants to sustain their position “is not enough” to grant in-house counsel access to highly confidential information of competitors); *Silversun Indus.*, 2017 WL 512321, at *3 (“Invocation of words and phrases is not enough. Nor is it enough to say that competitive business decisions *per-se* are not made by in-house counsel, but by others.”); *id.* at *1 n.2 (“Unsubstantiated assertions by counsel are given no evidentiary weight.”).

those decades, including as a “Manager” over rates and tariffs and a financial analyst.²² He currently serves AT&T at the high-ranking “Director” level.²³

Even more to the point, Mr. Rhinehart has explicitly testified on AT&T’s behalf that certain offerings of a competing carrier are “anticompetitive and discriminatory” and will “place AT&T at competitive and financial disadvantage to ... direct competitors of AT&T.”²⁴ He also has opined regarding how “AT&T will face massive and certain market share losses” as a result.²⁵ Given this testimony and Mr. Rhinehart’s long tenure and high-ranking Director status at AT&T, the risk of inadvertent disclosure and use is simply too great to permit Mr. Rhinehart and other non-lawyer AT&T personnel to be permitted access to Aureon’s highly confidential information required to be produced in this tariff proceeding – no matter how well-intentioned those employees may be.

²² Prefiled Direct Test. of Daniel P. Rhinehart Regarding United Utilities, Inc., Regulatory Comm’n of Alaska, U-08-90, at 1-2 (Dec. 23, 2008) (relevant excerpts attached as Ex. B hereto); *see also* Decl. of Daniel P. Rhinehart, *AT&T Corp. v. Iowa Network Servs., Inc. d/b/a Aureon Network Servs.*, FCC Proc. No. 17-56, at 1 (June 1, 2017) (testifying that he has held “a number of different jobs with increasing responsibilities in the finance and regulatory areas” at AT&T over nearly 40 years) (relevant excerpts attached as Ex. C hereto).

²³ *Id.*

²⁴ Direct Test. of Daniel P. Rhinehart on Behalf of AT&T Commc’ns of the Southwest, Inc., *Public Util. Comm’n of Tex.*, SOAH Dkt. No. 473-99-1963, PUC Dkt. No. 21292, at 4-5 (Oct. 22, 1999) (relevant excerpts attached as Ex. D hereto).

²⁵ *Id.* at 13; *see also* Report and Order, Pub. Serv. Comm’n of Mo., Case No. TT-2000-258, at 5 (Apr. 5, 2000) (discussing Rhinehart’s testimony that system of competitor “puts AT&T at competitive disadvantage”) (Ex. E hereto);

Direct Test. of Daniel P. Rhinehart on Behalf of AT&T Ga. Before the Ga. Pub. Serv. Comm’n Regarding the UAF Revenue Requirement of Pub. Serv. Tel. Co., Dkt. No. 32235, at 1, 3-6 (Aug. 17, 2011) (testifying that job title is “Lead Financial Analyst and opining regarding reasonableness of company’s claimed return and costs) (relevant excerpts attached as Ex. F hereto).

This concern is compounded by the possibility that all other interested carriers and other parties seeking to participate in this proceeding similarly could gain access to Aureon's highly confidential information by merely asserting that they are not involved in competitive decision-making. AT&T has not remotely demonstrated that expanding access to non-lawyer personnel of interested companies is warranted or appropriate.

IV. IN A RECENT INVESTIGATION OF AT&T'S TARIFFS, AT&T'S OWN INFORMATION WAS PROTECTED BY A PROTECTIVE ORDER COMPARABLY RESTRICTIVE TO THE ONE IN PLACE HERE.

AT&T's request for modification is particularly ironic given that AT&T itself was subject to a Protective Order in a recent tariff investigation of its own rates. Specifically, both the Protective Order entered in this proceeding and the one entered in the proceeding investigating certain AT&T tariffs included substantially the following provision in the Acknowledgment:

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.²⁶

Moreover, the disclosure of "Highly Confidential" information – including a long laundry list of categories that were spelled out in the Order and that resemble the types of information that

²⁶ Compare Protective Order, *In re Iowa Network Access Division Tariff F.C.C. No. 1*, WC Dkt. No. 18-60, Transmittal No. 36, App. A (Mar. 26, 2018) ("AT&T Protective Order") (Ex. G hereto) with Tariff Investigation Protective Order, *In re Investigation of Certain Price Cap Local Exch. Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exch. Carriers; AT&T Corp. Petition for Rulemaking To Reform Regulation of Incumbent Local Exch. Carrier Rates for Interstate Special Access Servs.*, DA 15-1387, WC Dkt. Nos. 15-247, 05-25, RM-10593, App. B att. 1 (Dec. 4, 2015) (relevant excerpts attached as Ex. H hereto).

Aureon has been directed to produce here – was unambiguously and explicitly “limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel.”²⁷ Thus, AT&T cannot be heard to complain in this investigation that the FCC’s current Protective Order is too restrictive.

V. AUREON DOES NOT OPPOSE (A) CONTINUED USE BY IDENTIFIED AT&T PERSONNEL OF INFORMATION THEY REVIEWED IN THE COMPLAINT PROCEEDING OR (B) A RULE THAT PARTIES SERVE ON AUTHORIZED PARTIES FULL INFORMATION WHEN IT IS FILED WITH THE FCC.

Finally, as an accommodation to AT&T’s employees who already were permitted access to certain confidential documents produced in the Complaint Proceeding, Aureon agrees to relax the use restriction under that Protective Order to enable those same employees – and only those employees – to use information in this proceeding that they have already reviewed in that proceeding. Other employees of other companies, however, should not be permitted access to such documents, consistent with the FCC’s existing Protective Order in this proceeding as well as the Protective Order in the recent investigation of AT&T’s own tariffs.

Further, in response to AT&T’s request (iv) on page 13 of its motion, Aureon agrees to make available (on the same day that Aureon files its direct case or rebuttal with the Commission) any confidential information included in its filings to each party who has signed an Acknowledgement to the Protective Order. *See* AT&T Mot. at 13. Given these accommodations and the strong basis for maintaining the current level of confidentiality protection specified in the governing Protective Order, there is simply no reason to entertain AT&T’s motion.

CONCLUSION

For the foregoing reasons, the FCC should deny AT&T’s Motion.

²⁷ AT&T Protective Order at 20.

Respectfully submitted,

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Date: April 30, 2018

CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, do hereby certify that on this 30th day of April 2018, copies of the foregoing document were sent to the following:

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EXHIBIT A

FEDERAL COMMUNICATIONS COMMISSION

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**Re: *AT&T Corp. v. Iowa Network Services, Inc.*, Proceeding Number 17-56
Bureau ID Number EB-17-MD-001**

Dear Counsel:

On February 17, 2017, AT&T Corp. (AT&T) and Iowa Network Services, Inc. (INS) requested that the Commission enter a Protective Order to govern filings in the above-captioned proceeding¹ Each party proposed a separate Protective Order. Although the parties concurred on many terms and conditions, they were unable to agree on language regarding the treatment of information and documents designated as "highly confidential."

Having reviewed the parties' submissions, we hereby adopt AT&T's proposed Protective Order, which is consistent with the Discovery Confidentiality Order to which the parties stipulated in the district court litigation underlying this primary jurisdiction referral.² We are satisfied that granting the parties' request will serve the public interest by ensuring that, in addition to Commission staff, only the parties' counsel and authorized representatives (as specified in the Protective Order) will have access to "confidential" and "highly confidential" information.

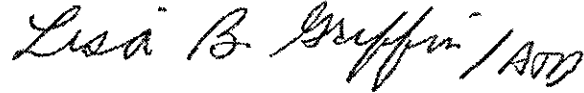
Accordingly, we hereby adopt AT&T's proposed Protective Order, making no changes to it as submitted by AT&T. A copy of the adopted Protective Order is attached.

¹ Letter from Michael J. Hunseder, Counsel for AT&T, to Christopher Killion, FCC, EB, MDRD (Feb. 17, 2017); Letter from James U. Troup, Counsel for INS, to Christopher Killion, FCC, EB, MDRD (Feb. 17, 2017).

² Discovery Confidentiality Order, *Iowa Network Services, Inc. v. AT&T Corp.*, Civil Action No. 3:14-cv-03439 (D.N.J. Dec. 30, 2014).

This letter ruling is issued pursuant to Sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, and authority delegated by Sections 0.111, 0.311, 1.729, and 1.731 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, 1.729, 1.731.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink that reads "Lisa B. Griffin / AD".

Lisa B. Griffin
Deputy Chief, EB/MDRD
(202) 418-7273
lisa.griffin@fcc.gov

Attachment

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF

AT&T CORP.,

Complainant,

vs.

IOWA NETWORK SERVICES, INC.,

Respondent.

Docket No.: _____

PROTECTIVE ORDER

The Enforcement Bureau of the Federal Communications Commission hereby enters the following Protective Order, adopted by consent of AT&T Corp. ("AT&T") and Iowa Network Services, Inc. ("INS"), to facilitate and expedite the production and review of documents containing trade secrets and commercial or financial information which is privileged or confidential, and to govern the use and disclosure of such information in this proceeding. The Protective Order sets forth the manner in which "Confidential Information" and "Highly Confidential Information," as those terms are defined herein, is to be treated.

This Protective Order is also intended to encompass materials that AT&T provided pursuant to a prior protective order entered by the United States District Court for the District of New Jersey in the case captioned *Iowa Network Services, Inc. v. AT&T Corp.*, 3:14-cv-03439 (D. N.J.) on December 30, 2014 (hereinafter, "District Court Confidentiality Order"). In addition, it will govern the use in this proceeding of documents that the parties or third parties have produced in other proceedings and that will be used in this proceeding subject to the terms of this Protective Order.

The Protective Order is not intended to determine whether any "Confidential Information" or "Highly Confidential Information" would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

1. Definitions.

a. Authorized Representative. "Authorized Representative" shall have the meaning set forth in Paragraph 7 below.

b. Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. Confidential Information. “Confidential Information” means

- (i) information submitted to the Commission or to another party in this proceeding by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4);
- (ii) information submitted to the Commission or to another party in this proceeding by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission rules and orders regarding the designation and treatment of Confidential Information (e.g., 47 C.F.R. § 0.459);
- (iii) information that the Commission has allowed to be exchanged or examined off-site and that otherwise complies with the requirements of this paragraph;
- (iv) information defined and/or designated as confidential information under the District Court Confidentiality Order; or
- (v) additional copies of, and information derived from, Confidential Information.

d. Highly Confidential Information. “Highly Confidential Information” means

- (i) information that (a) satisfies the requisites of Paragraph 1(c) above, (b) the Submitting Party has kept strictly confidential, and (c) the Submitting Party reasonably and in good faith claims constitutes some of its most sensitive business data that would place its business at a material competitive disadvantage in the marketplace if disclosed without restriction to personnel employed by the Reviewing Party;
- (ii) information defined and/or designated as attorneys’ eyes only information under the District Court Confidentiality Order; or
- (iii) additional copies of, and information derived from, Highly Confidential Information.

e. Counsel. “Counsel” means In-House Counsel and Outside Counsel of Record.

f. In-House Counsel. “In-House Counsel” means the attorney or attorneys employed by a party to these proceedings or who is employed by an affiliated entity and who is actively engaged in the conduct of this proceeding.

g. Outside Counsel of Record. "Outside Counsel of Record" means the firm(s) of attorneys (including employees of those firms) representing a party in these proceedings, provided that such attorney is not involved in competitive decision-making activities of any competitor of a Submitting Party.

h. Outside Consultant. "Outside Consultant" means a consultant or expert retained for the purpose of assisting Counsel in this proceeding, provided that such consultant or expert is not involved in competitive decision-making activities of any competitor of a Submitting Party.

i. Declaration. "Declaration" means Appendix A or Appendix B to this Protective Order, as applicable.

j. Reviewing Party. "Reviewing Party" means a person or entity participating in this proceeding that receives a Submitting Party's Confidential Information or Highly Confidential Information. The definition of "Reviewing Party" does not include the Commission or Commission staff.

k. Submitting Party. "Submitting Party" means a person or entity that seeks confidential treatment of Confidential Information or Highly Confidential Information it has filed or produced in this proceeding, pursuant to this Protective Order.

2. Claim of Confidentiality. The Submitting Party may designate information as "Confidential Information" or "Highly Confidential Information" consistent with the definitions of those terms in Paragraph 1 of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.457, 0.459 & 0.461, determine that all or part of the information claimed as "Confidential Information" or "Highly Confidential Information" is not entitled to such treatment.

3. Procedures for Claiming Information is Confidential or Highly Confidential. Confidential Information or Highly Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, "DO NOT RELEASE," "NOT FOR INCLUSION IN THE PUBLIC RECORD," or such similar designation along with the appropriate confidentiality designation under Paragraph 12(c). Such information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent that a document contains both Confidential Information and/or Highly Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information or Highly Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information and/or Highly Confidential Information.

4. Storage of Information at the Commission. The Secretary of the Commission or other Commission staff to whom Confidential Information or Highly Confidential Information is submitted shall place such information in a non-public file. Such information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such information is released from the restrictions of

this Order either through written agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

5. Access to Confidential Information. Unless otherwise agreed by the Submitting Party in writing, Confidential Information shall be made available only to Commission staff, Commission consultants, Counsel to the Reviewing Party, and persons designated by the Reviewing Party or Counsel to the Reviewing Party (including but not limited to Outside Consultants).

a. Except as provided in this Paragraph 5, before Counsel to a Reviewing Party or such other person designated by the Reviewing Party may obtain access to Confidential Information, Counsel, or such other designated person must execute the Declaration attached as Appendix A. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the Declaration attached as Appendix A.

b. Each Submitting Party shall have an opportunity to object to the disclosure of Confidential Information to any such persons identified in Declarations based on Appendix A. Any objection must be filed at the Commission and served on Counsel representing, retaining, or employing such person within two business days after receiving a copy of that person's Declaration. Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Confidential Information. If no such objection is lodged as to a person that has executed Appendix A, that person may have access to Confidential Information.

c. Notwithstanding anything in this Paragraph or in Paragraph 10, the Submitting Party may agree in writing that any person that has executed a Declaration based on Appendix A is not subject to the two business day waiting period and may obtain Confidential Material immediately.

6. Disclosure of Confidential Information. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of Paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the Declaration attached as Appendix A.

7. Authorized Representatives shall be limited to:

a. Counsel to the Reviewing Parties to this proceeding, including In-House Counsel actively engaged in the conduct of this proceeding in accordance with Paragraph 8, and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services in this proceeding;

- b. Specified persons, including employees of the Reviewing Parties, requested by Counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; or
- c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

8. Access to Highly Confidential Information. Unless otherwise agreed by the Submitting Party in writing, Highly Confidential Information shall be made available only to Commission staff, Commission consultants, Counsel to the Reviewing Party, Outside Consultants for the Reviewing Party, and (subject to the conditions set forth below in this Paragraph 8) the four individuals for each Reviewing Party who are identified in this Paragraph 8 who have executed the Declaration attached hereto as Appendix B. The following four INS employees may review Highly Confidential Information: Frank Hilton, Jeff Schill, Ron Keller, and Justyn Miller. The following four AT&T employees may review Highly Confidential Information: John Habiak, Geri Lancaster, Kim Meola, Dan Rhinehart (collectively, "the Employees").

a. Except as provided in this Paragraph 8, before Counsel to a Reviewing Party or such other person designated by the Reviewing Party may obtain access to Highly Confidential Information, Counsel, or such other designated person must execute the Declaration attached as Appendix B. Consultants under contract to the Commission may obtain access to Highly Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the Declaration attached as Appendix B.

b. Each Submitting Party shall have an opportunity to object to the disclosure of Highly Confidential Information to any such persons identified in Declarations based on Appendix B. Any objection must be filed at the Commission and served on Counsel representing, retaining, or employing such person within two business days after receiving a copy of that person's Declaration. Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Highly Confidential Information. If no such objection is lodged as to a person that has executed Appendix B, that person may have access to Highly Confidential Information.

c. Notwithstanding any other provision in this Order, and unless agreed to in writing by all affected parties, the Employees identified above shall not receive access to any Highly Confidential Information that has previously been produced in a prior proceeding and, pursuant to the protective order in that proceeding, has been designated as Highly Confidential Information (or any equivalent designation that prohibits disclosure of the material to non-attorney employees involved in competitive decision making). This provision expressly includes, but is not limited to, Highly Confidential Material (or its equivalent) produced by a party or any third party in AT&T's litigations with Great Lakes Communication Corp. (No. 5:13-cv-04117 (N.D. Iowa.) and File No. EB-16-MD-001 (FCC)) and with Northern Valley Communications, L.L.C. (No. 1:14-cv-01018).

d. If a Submitting Party believes that any information requested in discovery in this proceeding is not appropriate for disclosure to any of the Employees identified above, then the Submitting Party shall object in writing, within five days of receiving the discovery request, to the proposed disclosure, and provide reasons why the proposed disclosure should not be made to the Employee(s). If the parties cannot reach agreement regarding the appropriate disclosure, then either the Submitting Party or the Receiving Party may request that the Commission resolve the dispute.

e. Notwithstanding anything in this Paragraph or in Paragraph 10, the Submitting Party may agree in writing that any person that has executed a Declaration based on Appendix B is not subject to the two business day waiting period and may obtain Highly Confidential Material immediately.

9. Copies of Confidential and Highly Confidential Information. Counsel, Authorized Representatives, and Outside Consultants in this proceeding (including any subsequent administrative or judicial review) may make additional copies of Confidential Information and Highly Confidential Information, as applicable, but only to the extent required and solely for the preparation and use in this proceeding. The original copy and all other copies of the Confidential Information and Highly Confidential Information shall remain in the care and control of such persons, shall be subject to all requirements and protections set forth herein, and shall be kept properly secured at all times.

10. Filing of Declaration. The Reviewing Party shall file each executed Declaration with the Enforcement Bureau, on behalf of the Commission, and serve it upon each Submitting Party through its Outside Counsel of Record. The Reviewing Party shall serve each executed Declaration so that the Declaration is received by each Submitting Party at least two business days prior to such person's reviewing or having access to such Submitting Party's Confidential Information or Highly Confidential Information, as applicable. Notwithstanding anything in this Paragraph or in Paragraphs 5 and 8, the Submitting Party may agree in writing that any person that has executed a Declaration based on Appendices A or B is not subject to the two business day waiting period and may obtain Confidential Material or Highly Confidential Material immediately.

11. Use and Disclosure of Confidential Information or Highly Confidential Information. Confidential Information or Highly Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than this proceeding (including any subsequent administrative or judicial review) unless otherwise ordered by the Commission or a court of competent jurisdiction, shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use or disclosure of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information or Highly Confidential Information nor otherwise learned of its contents.

12. Pleadings Using Confidential Information or Highly Confidential Information. Submitting Parties and Reviewing Parties may, in any pleadings or other submissions that they file in this proceeding, reference the Confidential Information or Highly Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information or Highly Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information or Highly Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information or Highly Confidential Information subject to this Order must be clearly marked as applicable with the following designations or such other similar designations as to provide reasonable notice as to the contents of such materials:

"Contains Confidential Information subject to Protective Order entered in *AT&T Corp. v. Iowa Network Services, Inc.*, File No. ____;" and

"Contains Highly Confidential Information subject to Protective Order entered in *AT&T Corp. v. Iowa Network Services, Inc.*, File No. ____.

d. Any portion of a pleading or other submission that contains Confidential Information or Highly Confidential Information, to the extent that it is required to be served, shall be filed with the Secretary of the Commission and Outside Counsel of Record for the Reviewing Party. Such portions that contain Confidential Information or Highly Confidential Information shall be filed under seal. They shall not be placed in the Commission's public file unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information or Highly Confidential Information shall also file redacted copies of the pleading as follows:

(i) One original and one copy of the pleading shall be filed with the Secretary of the Commission containing no Confidential Information or Highly Confidential Information, which shall be placed in the Commission's public files. The public version of the pleading shall bear on the front page the legend "PUBLIC VERSION" and shall clearly indicate where confidential material has been redacted from an individual page. If any pages are removed in their entirety to prevent disclosure of confidential information, the Submitting Party shall insert a placeholder that (a) identifies each omitted document by its page, exhibit, or appendix number, (b) includes a descriptive title for the omitted document, and (c) contains the words "CONFIDENTIAL MATERIALS OMITTED" below the descriptive title.

(ii) In cases where a pleading contains Confidential Information, but not Highly Confidential Information, one original and three copies of the pleading shall be filed with the Secretary of the Commission containing such Confidential Information. This version of the pleading shall not be

placed in the Commission's public files but may be made available to those persons authorized by this Order to review Confidential Information. The confidential version of the pleading shall state on the front page in bold print, "DO NOT RELEASE," "NOT FOR INCLUSION IN THE PUBLIC RECORD," and on each page containing Confidential Information. In addition, the confidential version of the pleading shall identify any Confidential Information by including the legend "BEGIN CONFIDENTIAL" and "END CONFIDENTIAL" at the beginning and end of any such information.

(iii) In cases where a pleading contains both Confidential Information and Highly Confidential Information, one original and three copies of the pleading shall be filed with the Secretary of the Commission containing Confidential Information, but not Highly Confidential Information. Further, one original and three copies of the pleading shall be filed containing both Confidential Information and Highly Confidential Information. These versions of the pleading shall not be placed in the Commission's public files but may be made available to those persons authorized by this Order to review Confidential Information. The confidential and highly confidential versions of the pleading shall state on the front pages in bold print, "DO NOT RELEASE," "NOT FOR INCLUSION IN THE PUBLIC RECORD," and on each page containing Confidential Information or Highly Confidential Information. In addition, the confidential and highly confidential versions of the pleading shall identify any Confidential Information or Highly Confidential Information by including the legend "BEGIN CONFIDENTIAL" and "END CONFIDENTIAL" at the beginning and end of any such information.

A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information and/or Highly Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

13. Challenges to the Designation of Confidential or Highly Confidential Information. To the extent that a party disputes whether material designated pursuant to this Protective Order and 47 C.F.R. § 0.459 by a Submitting Party is Confidential or Highly Confidential Information as defined in Paragraphs 1(c) and 1(d) above, the challenging party may file a motion with the Commission to that effect pursuant to 47 C.F.R. §§ 1.727 and 1.731, and the Submitting Party will then have five (5) business days to file a response. Until the motion is decided by the Commission, the information at issue will be treated consistent with the manner in which it was initially designated by the Submitting Party.

14. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information or Highly Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of such information, the violating party shall take all necessary steps to remedy the improper disclosure

or use. The violating party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained such information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information or Highly Confidential Information in a manner not authorized by this Protective Order.

15. Termination of Proceeding. Unless otherwise ordered by the Commission or a court of competent jurisdiction, within 30 days after final resolution of this proceeding (which includes any administrative or judicial appeals), Reviewing Parties (including their Counsel, Authorized Representatives, and Outside Consultants) shall destroy or return to the Submitting Party all Confidential Information and Highly Confidential Information as well as all copies and derivative materials made. The Reviewing Party shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such information has been retained by any person having access thereto, except that Counsel to a Reviewing Party may retain two copies of pleadings and supporting exhibits submitted on behalf of the Reviewing Party and other attorney work product. Any such information contained in any copies of pleadings retained by Counsel to a Reviewing Party or in materials that have not been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with Paragraphs 9 and 11 of this Protective Order unless such information is released from the restrictions of this Order either through written agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

16. No Waiver of Confidentiality. Disclosure of Confidential Information or Highly Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any such materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information or Highly Confidential Information shall not be deemed a waiver of any privilege.

17. Client Consultation. Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information or Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client(s), Counsel shall not disclose Confidential Information or Highly Confidential Information to any person (including to In-House Counsel, in the case of Highly Confidential Information) who is not authorized pursuant to this Protective Order to receive such information.

18. Subpoena by Courts, Departments or Agencies. If a court, or a federal or state department or agency issues a subpoena or orders production of Confidential Information or Highly Confidential Information that a party has obtained under the terms of this Protective

Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose or seek any other available protection from such production prior to the production or disclosure of any Confidential Information or Highly Confidential Information.

19. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of the Reviewing Party to request further or renewed disclosure of Confidential Information or Highly Confidential Information.

20. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

This Protective Order is issued pursuant to Sections 4(i), 4(j) and 208 of the Communications Act as amended, 47 U.S.C. §§ 154(i), 154(j) and 208, sections 0.457(d) and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 0.457(d) and 1.720-1.736, and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311.

Appendix A to Protective Order

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

IN THE MATTER OF

AT&T CORP.,

Complainant,

vs.

IOWA NETWORK SERVICES, INC.,

Respondent.

Docket No.: _____

DECLARATION

I, _____, hereby declare under penalty of perjury that I have read and understand the Protective Order in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in Paragraph 5 of the foregoing Protective Order, as applicable, and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Confidential Information is used only as provided in the Protective Order; and (2) documents containing Confidential Information are not duplicated except as specifically permitted by the terms of Paragraph 9 of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ____ day of _____, 2017.

(Signed) _____
(Printed name) _____
(Representing) _____
(Title) _____
(Employer) _____
(Address) _____
(Phone) _____

Appendix B to Protective Order

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

IN THE MATTER OF

AT&T CORP.,

Complainant,

vs.

IOWA NETWORK SERVICES, INC.,

Respondent.

Docket No.: _____

DECLARATION

I, _____, hereby declare under penalty of perjury that I have read and understand the Protective Order in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Highly Confidential Information submitted by parties to this proceeding. I understand that the Highly Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in Paragraph 8 of the foregoing Protective Order, as applicable, and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Highly Confidential Information is used only as provided in the Protective Order; and (2) documents containing Highly Confidential Information are not duplicated except as specifically permitted by the terms of Paragraph 9 of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed

to them in the Protective Order.

Executed this ____ day of _____, 2017.

(Signed) _____
(Printed name) _____
(Representing) _____
(Title) _____
(Employer) _____
(Address) _____
(Phone) _____

EXHIBIT B

RECEIVED

By the Regulatory Commission of Alaska on Dec 23, 2008

STATE OF ALASKA

BEFORE THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chairman
Kate Giard
Mark K. Johnson
Anthony A. Price
Janis W. Wilson

In the Matter of the Consideration of the)
Access Charge Revenue Requirement of)
UNITED UTILITIES, INC.)

U-08-90

**PREFILED DIRECT TESTIMONY OF DANIEL P. RHINEHART
REGARDING UNITED UTILITIES, INC.**

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A My name is Daniel P. Rhinehart. My business address is 400 West 15th St., Room 950,
3 Austin, Texas 78701.

4 **Q BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?**

5 A I am employed by AT&T Services, Inc. My job title is Area Manager-Rates/Tariffs.
6 However, my primary job function is as a financial analyst. I am testifying today on
7 behalf of AT&T Alascom ("AT&T").

8 **Q PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

9 A I hold a Bachelor of Science in Education (mathematics major) and a Masters of
10 Business Administration. I have attended numerous training courses covering the
11 topics of separations, telephone accounting, and long run incremental costs. I have

1 completed the Brookings Institute course on Federal Government Operations and the
2 University of Southern California Center for Telecommunications Management, Middle
3 Management Program in Telecommunications. I am presently pursuing a Chartered
4 Financial Analyst (CFA) designation and passed the Level I examination in June, 2008.

5 **Q PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

6 **A** I began my career with Nevada Bell in 1979. Soon thereafter, I joined Nevada Bell's
7 Separations and Settlements organization where I was responsible for reviews of
8 independent telephone company separations and settlements studies and gained
9 significant experience in analyzing telephone cost studies. At the divestiture of the Bell
10 System in 1984, I joined AT&T's separations organization and was subsequently
11 promoted with responsibility for mechanized separations results and analysis for AT&T
12 Communications of California. Later, I joined the Exchange Carrier Cost Analysis
13 group where I evaluated numerous regulatory and cost filings of local telephone
14 companies operating in California. I also held the position of Vice Chairman of the
15 California Universal Lifeline Telephone Service Trust Fund for approximately two
16 years. I relocated to Texas in 1995 initially with responsibilities in the states of Texas,
17 Kansas, Arkansas, Missouri, and Oklahoma. Since then I have participated in
18 numerous local exchange carrier regulatory proceedings, with a focus on local exchange
19 carrier cost studies. In March 2006, I joined the post-SBC-AT&T merger finance
20 organization where I have had responsibility for developing cost studies as well as
21 analyzing studies produced by others.

1 Q HAVE YOU PREVIOUSLY TESTIFIED OR FILED TESTIMONY BEFORE A
2 PUBLIC UTILITY OR PUBLIC SERVICE COMMISSION?

3 A Yes. I have sponsored testimony on a variety of cost and policy topics in Arkansas,
4 California, Illinois, Kansas, Missouri, Nebraska, Oklahoma, and Texas. Exhibit DPR-1
5 identifies the proceedings in which I have provided testimony and the topics I have
6 addressed.

7 Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?

8 A The purpose of my testimony is to review the revenue requirements of United Utilities,
9 Inc. ("UII") as filed October 1, 2008 in Docket U-08-90 to establish reasonable access
10 charges as guided in part by the Alaska Intrastate Interexchange Access Charge Manual
11 ("AIICM"). I will address a variety of adjustments to UII's filing that correct apparent
12 errors and make adjustments UII failed to properly reflect. Specifically, I address
13 UII's apparent failure to overtly consider reasonable adjustments attributable to its
14 recent acquisition by General Communication, Inc. ("GCI"), namely the cost savings
15 related to departing employees and the elimination of the UII Board of Directors. I
16 also address modifications to UII's reasonably projected depreciation expenses,
17 elimination or amortization of certain expenses related to both UII's asset verification
18 process and its recently filed request for depreciation re-prescription in Docket U-08-
19 095, and corrections to certain asset adjustments improperly implemented in UII's
20 study. Finally, I address the issue of excessive corporate operations expenses.

1 MLT-1. I believe that the FCC's allowance is more than reasonable and should also be
2 reflected and adopted by this Commission. Thus, in the absence of other overt
3 adjustments by UUI, I would recommend the disallowance of \$125,345 of expense from
4 the total company operations for UUI.

5 **Q DOES YOUR RECOMMENDED DISALLOWANCE DUPLICATE ANY OTHER**
6 **PROPOSED DISALLOWANCES OR UUI PROFORMA ADJUSTMENTS?**

7 **A** UUI has overtly adjusted its corporate operations expenses downward in excess of my
8 recommended disallowance of excess corporate operations expense above. Thus, for
9 the present year filing I make no extra downward adjustment to UUI's expenses.
10 However, for the future, I do recommend that the Commission adopt the principle that it
11 will limit companies to corporate operations expenses to no more than the levels
12 allowed by the FCC.

13 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

14 **A** Yes. However, I reserve the right to supplement my testimony if substantive new
15 information comes to light.
16

17 P:\Clients\5667.005\U 08 090\2008 12 23 U 08 090 UUI Rhinehart Testimony (CONFIDENTIAL)(release to legal).doc

EXHIBIT C

PUBLIC VERSION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**In the Matter of
AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090**

Complainant,

v.

**IOWA NETWORK SERVICES, INC.
d/b/a Aureon Network Services
7760 Office Plaza Drive South
West Des Moines, IA 50266
(515) 830-0110**

Defendant.

**Proceeding Number 17-56
File No. EB-17-MD-001**

DECLARATION OF DANIEL P. RHINEHART

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. ("AT&T"). My job title is Director - Regulatory. My current responsibilities include participating in regulatory dockets and litigation matters on behalf of various AT&T entities in the areas of cost analysis and universal services matters. I also direct the development of AT&T's pole attachment and conduit occupancy rates pursuant to standard FCC formulas, and I support the analysis of third-party pole attachment rates. I have been employed by AT&T and its predecessors since 1979 and have held a number of different jobs with increasing responsibilities in the finance and regulatory areas. Over the years, I have testified in a number of different federal and state rate cases regarding the reasonableness of rates filed by AT&T and by other carriers. My curriculum vitae is included as Exhibit 82 to the Formal Complaint.

PUBLIC VERSION

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on

June 1, 2017.


Daniel P. Rhinehart

EXHIBIT D

AT&T
10/22/99

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Original + 22 copies

**SOAH DOCKET NO. 473-99-1963
PUC DOCKET NO. 21392**

**TESTIMONY OF DANIEL P. RHINEHART
ON BEHALF OF
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Daniel P. Rhinehart. My business address is 919 Congress Ave.,
3 Suite 400, Austin, Texas, 78701.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?**

6 A. I am employed by AT&T as District Manager - State Government Affairs.

8 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

9 A. I graduated from the University of Nevada at Reno in 1977 with a Bachelor of
10 Science Degree with High Distinction in Education, majoring in mathematics. In
11 1987, I received a Masters of Business Administration degree, with Honors, from
12 Saint Mary's College in Moraga, California. In addition, I have attended
13 numerous training courses covering the topics of separations, telephone
14 accounting, and long run incremental costs. I have completed the Brookings
15 Institute course on Federal Government Operations and the University of
16 Southern California Center for Telecommunications Management, Middle
17 Management Program in Telecommunications.

1 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

2 A. I joined Nevada Bell in 1979 as a Staff Specialist for the Residence Installation
3 and Maintenance organization. My next assignment was in Nevada Bell's
4 Separations and Settlements organization where I was responsible for reviews of
5 independent telephone company separations and settlements studies.

6
7 In 1984, I joined AT&T's separations organization in San Francisco and was
8 subsequently promoted in August 1985 with responsibility for mechanized
9 separations results and analysis for AT&T Communications of California and
10 later for exchange carrier cost analysis. In 1987, I became Regulatory Manager,
11 and oversaw AT&T's participation in local exchange carrier regulatory
12 proceedings. I was promoted in April 1995 to District Manager - Government
13 Affairs, with responsibilities in the states of Texas, Kansas, Arkansas, Missouri,
14 and Oklahoma. Since approximately June of 1996 I have been responsible for
15 oversight of AT&T's participation in local exchange carrier regulatory
16 proceedings, with a focus on Local Exchange Carrier cost studies. During that
17 time I have become very familiar with many of the cost study processes employed
18 by Southwestern Bell Telephone Company (SWBT). Prior to my relocation to
19 Texas, I held the position of vice chairman of the \$300 million California
20 Universal Lifeline Telephone Service Trust Fund for approximately two years in
21 addition to my regular work assignments.

22

1 **Q. HAVE YOU PREVIOUSLY SPONSORED TESTIMONY IN OTHER**
2 **REGULATORY PROCEEDINGS?**

3 A. Yes. I have sponsored testimony in Arkansas, Kansas, Missouri, Oklahoma,
4 Texas, and California. Attachment DPR-1 identifies the proceedings in which I
5 have provided testimony and the topics I have addressed.

6
7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A. By this testimony I will show that the Switched Access Optional Payment Plan
9 (OPP) offered by SWBT is anticompetitive and discriminatory and, in spite of
10 recent changes, should be rejected in its current form.

11
12 **Q. ARE YOU FAMILIAR WITH THE AT&T COMPLAINT THAT**
13 **INITIATED THIS DOCKET?**

14 A. Yes.

15
16 **Q. HAVE YOU REVIEWED SWBT'S RECENT REVISIONS TO THE OPP**
17 **FILED BY SWBT ON OCTOBER 13, 1999?**

18 A. Yes.

19
20 **Q. DO THE CHANGES MADE BY SWBT SATISFY AT&T'S CONCERNS**
21 **WITH THE OPP?**

22 A. No. While SWBT made good efforts to clarify language, modify the termination
23 liabilities associated with the OPP, and limit the maximum discounts available in

1 some circumstances, the OPP remains discriminatory and anticompetitive and
2 should be rejected by the Commission. In fact, SWBT's modifications actually
3 raise additional concerns.
4

5 **Q. PLEASE EXPLAIN AT&T'S BROAD CONCERNS WITH THE OPP AS**
6 **MODIFIED BY SWBT.**

7 A. The discount rates offered by SWBT will place AT&T at competitive and
8 financial disadvantage to SWBT subsidiaries, affiliates, business partners, and to
9 other direct competitors of AT&T in the long distance market in Texas. SWBT's
10 OPP is structured in a way that will effectively preclude AT&T from taking
11 advantage of the best discounts afforded under Option 1, and the design of Option
12 2 will make substantively larger discounts available to SWBT's subsidiaries,
13 affiliates and business partners than would be available to AT&T.
14

15 Under Option 1, a purchaser of switched access service must agree to continue to
16 purchase substantially the same quantities of switched access service (80%, 90%
17 or 100%) as it does today or face potentially substantial nonperformance
18 liabilities. The discounts offered at the 80% commitment level are minimal and to
19 qualify for the largest discount, the purchaser must commit to maintaining and
20 increasing its switched access usage throughout the length of a five-year
21 agreement. Because SWBT or a corporate sibling will enter the long distance
22 market in the near future and potentially capture significant volumes of long
23 distance traffic, it will be nearly impossible for AT&T, and perhaps many other

1 firms, to make and keep the commitments required to obtain the highest level of
2 benefits of SWBT's Switched Access OPP Option 1.

3
4 SWBT's long distance entry is not the only hurdle faced by large interexchange
5 carriers (IXCs) when considering SWBT's OPP. IXCs are constantly vying
6 among themselves for customers and there is significant contention for customers
7 among the largest IXCs. Competition among IXCs is part of the business risk
8 faced by current competitors and necessarily must be weighed in any decision
9 regarding the level of participation in the SWBT OPP that might be selected, but
10 there are new competitors at the local level too.

11
12 The quantity of AT&T switched access purchases will be affected directly by
13 expanding competition for local service. As local service is captured by a
14 competitive local exchange carrier (CLEC), access charges related to AT&T toll
15 service over those customer lines are no longer access charges that will be paid to
16 SWBT and thus no longer eligible for consideration in the annual assessment of
17 whether the OPP commitment levels have been met. This is true whether the
18 CLEC provides service over unbundled network elements (UNEs) or over its own
19 facilities. While SWBT's own words suggest that the OPP offer is designed to
20 limit bypass of SWBT's switched access service, the terms of the OPP also have
21 the effect of limiting AT&T's participation in it simply because AT&T has plans
22 to compete with SWBT for local service.

1 SWBT's own long distance affiliate, some of its business partners, and indeed
2 many smaller IXCs, may gladly enter into agreements with SWBT to obtain the
3 benefits of OPP Option 1. Business growth plans and even the promise of higher
4 volumes of traffic being routed to them by SWBT in the future may make OPP
5 Option 1 an easy way for smaller firms to gain an instant 10% cost advantage
6 over AT&T without regard to any difference in the cost to SWBT to serve the
7 smaller firm versus the cost to serve AT&T. The design of OPP Option 1 is such
8 that any large IXC, including AT&T, will be disadvantaged in an anticompetitive
9 fashion.

10
11 Option 2 is structured to provide a lesser initial discount to the switched access
12 customer but is also structured to provide customers that significantly grow their
13 access minutes of use year over year with access rate reductions that exceed those
14 available under OPP Option 1. For each ten percent increase in switched access
15 volumes, an Option 2 customer will receive an additional one percent discount
16 (up to a four percent maximum) in its total access bill above the base discount
17 guaranteed in the Option 2 agreement. Once again, this offer is discriminatory
18 against AT&T because it would be easy for a SWBT long distance affiliate or
19 subsidiary to gain the maximum discounts while at the same time it would be
20 impossible for AT&T to grow its switched access volumes significantly. Indeed
21 the FCC recently found that switched access discount plans designed around
22 growth in volumes would not be approved by them exactly because such plans

1 provide discriminatory preference to the Bell Operating Companies' long distance
2 affiliates.

3
4 **Q. DO YOU BELIEVE THAT ANY DISCOUNTS FOR SWITCHED ACCESS**
5 **SERVICE COULD BE REASONABLE?**

6 A. I believe that in some instances discounts based on the absolute quantity of traffic
7 delivered could be reasonable. In such instances, cost-causative differences could
8 be discerned. However, smaller interexchange carriers have traditionally
9 complained about such plans because such plans would provide the greatest
10 discounts to carriers such as AT&T, Worldcom, and Sprint. In the OPP before us
11 now, we see the opposite side of the coin. Smaller firms could benefit
12 disproportionately through lower switched access rates even though they have
13 much smaller quantities of traffic than the largest carriers and cannot justify
14 receiving a lower price based on cost.

15
16 **Q. DO YOU BELIEVE THAT THERE ARE ANY WAYS THAT THE SWBT**
17 **OPP CAN BE MADE ACCEPTABLE TO AT&T?**

18 A. I do not believe that Option 2 is reasonable under any circumstance. Providing
19 additional discounts to carriers based on increases in switched access volumes
20 will have the effect, intended or not, of overtly benefiting an affiliate or business
21 partner of SWBT by making it easy for such a firm to obtain the best discounts
22 available.

1 share in Connecticut continued its steep decline to 41.8%.⁷

2

3 **Q. CAN YOU EXPLAIN SNET'S SUCCESS IN THE MARKETPLACE?**

4 A. SNET probably says it best in a press release dated July 29, 1999. A SNET
5 spokesman said:

6 Connecticut customers appreciate SNET's ability to provide both
7 local and long-distance service, and this is reflected in the
8 significant market share we've gained in the Connecticut long-
9 distance market. Soon we hope to offer customers in our other
10 regions packages of integrated services that would feature long-
11 distance – something we know they want.
12

13 **Q. WHAT ARE THE IMPLICATIONS OF THIS DATA?**

14 A. The implications are two-fold. Once SWBT or an affiliate or subsidiary gains
15 authority to offer interLATA long distance service in Texas, it will gain
16 presubscribed lines rapidly and it will be in a position to agree to SWBT's OPP
17 Option 1 or 2 without facing any risk that it would be unable to qualify for the
18 greatest possible discounts under the OPP. Second, AT&T will face massive and
19 certain market share losses to SWBT that will preclude AT&T from meeting the
20 requirements for obtaining and keeping the same discounts. The result is obvious.
21 SWBT's OPP is discriminatory and anticompetitive because it will effectively
22 grant highly favorable treatment to at least one carrier – a SWBT affiliate – while
23 at the same time preclude AT&T the opportunity to enjoy the same benefits.

⁷ Connecticut results should also be compared to AT&T's nation-wide average residential market share of 58.3% in 1998 to appreciate the significant effect that SWBT interLATA entry is likely to have on AT&T. 1998 results from the FCC's Industry Analysis Division, Common Carrier Bureau report *Trends in Telephone Service*, September 1999. The report can be downloaded [file names TREND299.ZIP, TREND299.PDF] from the FCC-State Link Internet site at <http://www.fcc.gov/ccb/stats>.

1 to permit LATA by LATA agreements, and it must be modified to explicitly
2 recognize the effects of entry into the long distance market by SWBT or an
3 affiliate or subsidiary as outlined above. If Option 1 is not rejected outright, but is
4 modified by the Commission, then all existing Option 1 agreements must be
5 modified to conform with the requirements of an order from this Commission. If
6 Option 1 is rejected by the Commission, then all existing Option 1 agreements
7 should be terminated.

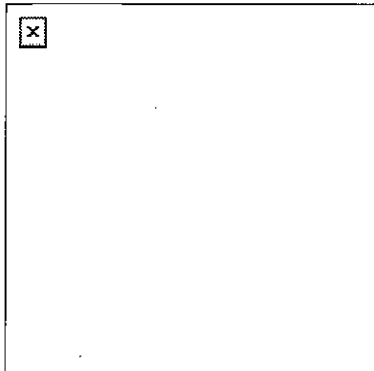
8

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 **A. Yes.**

EXHIBIT E

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI



In the Matter of Southwestern Bell Telephone)

Company's Proposed Tariff to Introduce a) **Case No. TT-2000-258**

Discount on the Local Plus® Monthly Rate.) Tariff No. 200000254

Issue Date: April 6, 2000

Effective Date: April 17, 2000

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Southwestern Bell Telephone)

Company's Proposed Tariff to Introduce a) Case No. TT-2000-258

Discount on the Local Plus® Monthly Rate.) Tariff No. 200000254

APPEARANCES

Leo J. Bub, Attorney at Law, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Kevin K. Zarling, Attorney at Law, 919 Congress Avenue, Suite 900, Austin, Texas 78701-2444, for AT&T Communications of the Southwest, Inc.

Linda K. Gardner, Attorney at Law, 5454 West 110th Street, Overland Park, Kansas 66211, for Sprint Communications Company, L.P.

Michael Dandino, Attorney at Law, P.O. Box 7800, Jefferson City, Missouri 65102-7800, for Office of the Public Counsel and the Public.

William K. Haas, Attorney at Law, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History:

On September 20, 1999, Southwestern Bell Telephone Company (SWBT) issued a revision to its tariffs that proposed to offer a discount on the Local Plus monthly rate to business customers who have more than one line. The tariff revision bore an effective date of October 20, 1999. On September 29, AT&T Communications of the Southwest, Inc. (AT&T) filed an Application to Intervene

and a Motion to Reject or in the Alternative Suspend the Proposed Tariff.

On October 1, the Commission issued a Notice Establishing Time in Which to Respond, directing that any response to AT&T's application and motion was to be filed on or before October 12. On October 12, the Staff of the Public Service Commission (Staff) filed a Memorandum recommending that the Commission suspend SWBT's tariff pending an investigation of SWBT's practices regarding resale of Local Plus service to Interexchange Carriers (IXCs). Also on October 12, SWBT filed a pleading in opposition to AT&T's application and motion.

On October 14, the Commission issued an Order Granting Motion to Suspend Tariff, Granting Application to Intervene and Setting Prehearing Conference. That order suspended SWBT's tariff for a period of 120 days beyond October 20, to February 17, 2000. That order also provided notice to all Incumbent Local Exchange Companies, all Competitive Local Exchange Companies (CLECs), and all IXCs in the State of Missouri. Any interested persons or entities wishing to intervene were directed to file an application to intervene on or before November 3.

SWBT filed an Application for Partial Rehearing on October 22. Staff filed a response in opposition to partial rehearing on November 1. The Commission issued an Order Denying Application for Partial Rehearing on November 2.

On November 3, Sprint Communications Company L.P. (Sprint) filed an application to intervene. No other party requested permission to intervene. On November 5, the Commission issued an order granting Sprint's application to intervene.

A prehearing conference was held on November 17. On November 24, following the prehearing conference, Staff, on behalf of all the parties, filed a Motion to Establish Procedural Schedule. On November 30, the Commission issued an order that established the procedural schedule requested by the parties. In response to a motion by SWBT, the Commission issued an Order Establishing Protective Order on December 9. SWBT filed direct testimony in support of its tariff on December 29. Staff and AT&T filed rebuttal testimony on January 14, 2000. SWBT, Staff and AT&T filed surrebuttal testimony on January 28.

On January 21, the Staff, on behalf of all of the parties, filed a proposed list of issues. That list of issues identified only one issue, "Should Southwestern Bell Telephone Company's Local Plus promotion be approved?" The list of issues also contained a footnote indicating that the parties were unable to agree on other potential issues requiring resolution. Also on January 21, AT&T filed a separate list of seven issues which it believed should be addressed in the hearing. On January 25, the Commission issued an Order Adopting List of Issues that directed all of the parties to respond to the issues identified by AT&T. Staff, the Office of the Public Counsel (Public Counsel) SWBT, AT&T and Sprint each filed a statement of its positions regarding those issues on or before January 31.

On January 31, SWBT filed a Motion to Strike, asking that the Commission strike portions of the rebuttal testimony of one of AT&T's witnesses. SWBT described the challenged testimony as "irrelevant and improper attempts to expand this docket to relitigate matters already decided by the Missouri Public Service Commission." On the morning of the hearing, February 3, AT&T filed a response to the Motion to Strike. At the hearing SWBT's Motion to Strike was taken up by the Commission, on the record, and denied in its entirety.

The matter proceeded to a hearing on the merits on February 3, 2000. Testimony supporting and opposing SWBT's tariff was admitted into evidence. On February 10, the Commission issued an Order Further Suspending Tariff that suspended SWBT's tariff an additional sixty days, until April 17. The parties submitted initial briefs on March 2 and reply briefs on March 20.

At the hearing, questions arose concerning the resale of Local Plus by CLECs in Missouri. On February 14, SWBT submitted late-filed Exhibit No. 13, consisting of two pages entitled CLECs Reselling Local Plus in Missouri. The exhibit was submitted in both highly confidential and non-proprietary versions. On February 17, the Commission issued a Notice Regarding Late Filed Exhibit, which notified any party wishing to make an objection to the late-filed exhibit that it must do so no later than February 28. The notice also indicated that if no objections were filed, the late-filed exhibit would be admitted into evidence. No party filed any objections to late-filed Exhibit No. 13 and it will therefore be admitted into evidence.

Findings of Fact:

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

Evidence Presented:

Thomas Hughes and Sherry Myers presented testimony on behalf of SWBT. Mr. Hughes testified that Local Plus, including the promotion that is the subject of this tariff, is available for resale by CLECs and IXCs. Nine CLECs are currently reselling the service but it is not being resold by any IXCs.

CLECs have the option of using an electronic ordering system to place an order for Local Plus. That electronic system is not currently available for use by an IXC because its use is restricted to local service providers of record for the dial tone access line. That restriction excludes IXC providers. SWBT offers an alternative, fax-based ordering system for use by IXC providers who wish to order Local Plus for resale. SWBT requires that any IXC provider who wishes to resell Local Plus complete an IXC Local Plus Resale Account Profile form and enter into a resale agreement for Local Plus. Hughes testified that SWBT is willing to modify the ordering system in consultation with the IXCs if an increased demand for the service is demonstrated.

Hughes also testified that SWBT is willing to negotiate an interconnection agreement that would permit a facility-based CLEC to offer a service like Local Plus on an Unbundled Network Element (UNE) basis. However, SWBT has not determined the price it would charge such a CLEC because it has never received a request for that service.

Sherry A. Myers also presented testimony on behalf of SWBT. Ms. Myers testified that Local Plus is an optional 1-way outbound calling service available to

single-party, flat-rate residence and business customers. For a flat monthly rate additive, Local Plus subscribers can place unlimited local calls to all customers within the LATA. The promotional tariff for which SWBT seeks the Commission's approval would allow business customers who purchase Local Plus on two to ten lines to pay the tariffed rate for Local Plus for the first line and receive a discounted monthly rate on the additional lines. SWBT is willing to make the promotion available for resale at the wholesale discount. The promotion is only available for new or additional requests for Local Plus. The promotion is not available for customers who already have Local Plus.

Thomas A. Solt offered testimony on behalf of the Staff. Mr. Solt testified that the Commission should ensure that Local Plus is available for resale as a UNE by facilities based CLECs. Mr. Solt offered the opinion that the fax-based ordering system that SWBT was offering for use by IXC's was reasonable and sufficient. Mr. Solt testified that SWBT's failure to provide a detailed listing of the identifying telephone numbers of the lines on which an IXC is reselling Local Plus would make it difficult or impossible for an IXC reseller to determine if Local Plus was being applied to the proper lines. Finally, Mr. Solt testified that Local Plus and services similar to Local Plus are beneficial to consumers.

Daniel P. Rhinehart offered testimony on behalf of AT&T. Mr. Rhinehart testified that AT&T feared that SWBT would refuse to make its promotion of Local Plus available at the appropriate wholesale discount. Rhinehart also testified that SWBT should not be allowed to assess multiple first line fees on AT&T when AT&T purchases the Local Plus promotion for its separate multi-line customers. In addition to those concerns about the promotion, Rhinehart also testified that SWBT has failed to effectively make Local Plus available for resale to IXC's, such as AT&T.

Rhinehart asserted that SWBT has failed to provide IXC's the opportunity to order Local Plus through a direct mechanized process that would allow an IXC prompt access to the preorder information that is available to SWBT. Rhinehart indicated that the fax-based ordering system offered by SWBT is a poor substitute for the ordering system actually used by SWBT and puts AT&T at a competitive disadvantage. Rhinehart also objected to SWBT's requirement that AT&T, acting as an IXC, sign a separate service agreement before it would be allowed to resell Local Plus. AT&T asserts that it already has an interconnection

agreement with SWBT and that interconnection agreement should be sufficient to govern AT&T's resale of Local Plus as an IXC.

Sprint and Public Counsel participated in the hearing but did not call any witnesses or present any evidence.

Discussion

Local Plus is an optional one-way outbound calling plan offered by SWBT that allows subscribers to make unlimited calls within a Local Access and Transport Area (LATA) for a flat-rated monthly additive of either \$30 for residence customers or \$60 for business customers. The Commission first considered SWBT's offering of Local Plus in case number TT-98-351. In a Report and Order issued in that case on September 17, 1998, the Commission found that "imputation of access charges would not be necessary if this type of service is available for

resale at a wholesale discount to CLECs and IXC's." The Commission rejected SWBT's initial tariff offering Local Plus. However, SWBT resubmitted a Local Plus tariff incorporating the revisions suggested by the Commission. After considering the revised tariff in case number TT-99-191, the Commission allowed SWBT's Local Plus tariff to go into effect by operation of law on November 29, 1998.

The tariff that is the subject of this case concerns SWBT's promotional offer regarding its Local Plus service. The tariff proposes that each multi-line business customer pay the full \$60 monthly rate for the first line equipped with Local Plus and a discounted monthly rate of \$35 per line for the second through tenth line equipped with Local Plus. If a business customer ordered Local Plus in quantities of 11 or more, the customer would pay \$60 for the first line equipped with Local Plus and a discounted rate of \$25 for the second and additional lines equipped with Local Plus. SWBT's tariff proposed that the offer would be available from October 20, 1999 through December 31, 1999, with the discounted rates remaining in effect until December 31, 2000. The promotional period expired while this tariff was suspended.

Only two of the arguments put forward by the parties who would have the Commission reject SWBT's tariff relate directly to the proposed promotion. The first is that SWBT should be required to offer the promotion for resale at the appropriate wholesale discount when the discounted rate extends beyond ninety days. SWBT repeatedly indicated in its testimony that it would offer the promotion for resale at the discounted rate. Therefore, there is no dispute on this issue that would require resolution by the Commission.

The second issue regarding the promotion was raised by AT&T and concerns whether SWBT should be permitted to assess multiple first line fees on AT&T when AT&T purchases the Local Plus promotion for its separate multi-line customers. Essentially, AT&T argues that it should be treated as an end-user and allowed to purchase multiple lines at the discounted rate created by the promotion. AT&T's position is not supported by the evidence and indeed, AT&T's witness, Daniel P. Rhinehart, indicated at the hearing that AT&T would "accede to Southwestern Bell's billing limitations on this" (TR 247). AT&T's proposal would permit aggregation of Local Plus service. The Commission has already addressed the aggregation question in its Report and Order in Case Number TT-98-351 and found that SWBT's restriction on aggregation of Local Plus was a reasonable restriction on resale. The Commission will not reverse that finding.

The other issues raised in opposition to SWBT's promotional tariff relate to consideration of the underlying Local Plus service. Those issues concern whether or not SWBT has effectively made Local Plus available for resale by IXC's and CLECs who would like to provide those services as an unbundled network element (UNE). When the Commission initially addressed the Local Plus service in its Report and Order in Case Number TT-98-351, it found that Local Plus service would be permitted without imputation of terminating access charges only if the service were "made available for resale at a wholesale discount to CLECs and IXC's."

With regard to CLECs, the evidence demonstrated that several CLECs are actively reselling Local Plus and that the number of lines being resold is increasing from month to month. Furthermore, the availability of the proposed promotion at the wholesale discount rate may encourage additional reselling of Local Plus by CLECs. Clearly, for most CLECs Local Plus is available for resale.

However, there was some testimony presented indicating that a CLEC wishing to provision Local Plus through UNEs might encounter difficulties. SWBT indicated that it was willing to negotiate amendments to its interconnection agreement that would allow a facilities-based CLEC to offer a Local Plus service using SWBT's UNEs when the CLEC buys a switchport from SWBT. SWBT was unable to describe exactly what arrangements would be made to permit the offering of such services because no CLEC has sought to provision Local Plus in such a manner. Theoretical difficulties that might be encountered by a hypothetical competitor at some time in the future are not a reasonable basis for rejecting SWBT's promotional tariff.

AT&T, Sprint, Staff and Public Counsel are concerned that IXC's do not have adequate access to SWBT's mechanized preorder, ordering and provisioning systems. Concerns were also expressed that the billing statements offered by SWBT to IXC's seeking to resell Local Plus are inadequate. AT&T also objects to SWBT's requirement that it sign a separate service agreement before reselling Local Plus as an IXC.

The Commission will not back away from its previously stated requirement that SWBT make Local Plus available for resale to CLEC's and IXC's. Availability for resale requires that SWBT allow IXC's the opportunity to resell Local Plus in a manner that is comparable to the manner in which Local Plus is resold by CLEC's and in a manner that is comparable to the manner in which SWBT itself sells that service.

However, this case exists only to consider SWBT's promotional tariff. As a result, only those issues directly relating to the promotional tariff need to be resolved by the Commission. The evidence indicates that this tariff is just and reasonable and is in accord with the law and prior decisions of the Commission. The Commission is willing to approve SWBT's promotional tariff. However, because the effective dates set in the tariff for the promotion have already passed, SWBT will

be permitted to submit substitute sheets establishing appropriate dates for the promotion.

Because of the limited scope of this case, this is not the best forum for consideration of the technical aspects of the availability of resale of Local Plus by IXC's. Nevertheless, the Commission is concerned about these issues. Therefore, the Commission will open a case on its own motion to direct Staff to investigate the effective availability for resale of Local Plus by IXC's and CLEC's.

Conclusions of Law:

The Missouri Public Service Commission has reached the following conclusions of law:

1. Section 392.220, RSMo Supp. 1999, requires every telecommunications company to file tariffs with the Commission showing its rates, rentals and charges for service.
2. Section 392.200, RSMo Supp. 1999, provides that "all charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than

allowed by law or by order or decision of the commission.

Based upon the Commission's review of the applicable law, SWBT's tariff, and its findings of fact, the Commission concludes that SWBT's proposed promotion should be approved.

IT IS THEREFORE ORDERED:

1. That the tariff sheets issued by Southwestern Bell Telephone Company on September 20, 1999, assigned tariff number 200000254, and previously suspended by the Commission until April 17, 2000, are rejected because the dates established for the promotion have passed.
2. That Southwestern Bell Telephone Company shall be permitted to submit substitute tariff sheets establishing appropriate effective dates for its promotion.
3. That late-filed exhibit number 13 is admitted into evidence.
4. That any evidence the admission of which was not expressly ruled upon is admitted into evidence.
5. That any objection to the admission of any evidence that was not expressly ruled upon is overruled.
6. That any motions not expressly ruled upon are denied.
7. That this Report and Order shall become effective on April 17, 2000.

BY THE COMMISSION

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, Schemenauer,

and Drainer, CC., concur

Crompton, C., not participating

Dated at Jefferson City, Missouri,

on the 6th day of April, 2000.

EXHIBIT F

1 AT&T GEORGIA
2 DIRECT TESTIMONY OF DANIEL P. RHINEHART
3 BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 32235
5 REGARDING THE UAF REVENUE REQUIREMENT OF
6 PUBLIC SERVICE TELEPHONE COMPANY
7 AUGUST 17, 2011

I.
INTRODUCTION, QUALIFICATIONS, AND SUMMARY

8 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

9 A. My name is Daniel P. Rhinehart. My business address is 9600 Great Hills Trail,
10 Room 204, Austin, Texas 78759.

11 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?**

12 A. I am employed by AT&T Services, Inc. My job title is Lead Financial Analyst.
13 This direct testimony is submitted on behalf of AT&T Georgia (AT&T).

14 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

15 A. I hold a Bachelor of Science in Education from the University of Nevada, Reno
16 and a Masters of Business Administration from Saint Mary's College of
17 California. I have attended numerous training courses covering the topics of
18 separations, telephone accounting, and long run incremental costs. I have
19 completed the Brookings Institution course on Federal Government Operations
20 and the Middle Management Program in Telecommunications at the University of
21 Southern California Center for Telecommunications Management.

22 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

**DIRECT TESTIMONY
(RHINEHART)**

1 A. I began my career with Nevada Bell in 1979. Soon thereafter, I joined Nevada
2 Bell's Separations and Settlements organization where I was responsible for
3 reviews of independent telephone company separations and settlements studies¹
4 and gained significant experience in analyzing telephone cost studies. Upon the
5 divestiture of the Bell System in 1984, I joined AT&T's separations organization
6 and was responsible for mechanized separations results and analysis for AT&T
7 Communications of California. Later I joined the Exchange Carrier Cost Analysis
8 group where I evaluated numerous regulatory and cost filings of local telephone
9 companies operating in California. I also held the position of vice chairman of the
10 California Universal Lifeline Telephone Service Trust Fund for approximately two
11 years. I relocated to Texas in 1995 initially with responsibilities in the states of
12 Texas, Kansas, Arkansas, Missouri, and Oklahoma. Since then I have
13 participated in numerous local exchange carrier regulatory proceedings, with a
14 focus on local exchange carrier cost studies. In March 2006, I joined the post-
15 SBC-AT&T merger finance organization where I have had responsibility for
16 developing cost studies as well as analyzing studies produced by others.

17 **Q. HAVE YOU PREVIOUSLY TESTIFIED OR FILED TESTIMONY BEFORE A**
18 **STATE BOARD OR REGULATORY COMMISSION?**

19 A. Yes. I have sponsored testimony on a variety of cost and policy topics in Alaska,
20 Arkansas, California, Georgia, Illinois, Iowa, Kansas, Missouri, Nebraska,
21 Oklahoma, and Texas. I also provided testimony previously in this proceeding on

¹ "Separations" is a process by which telephone company assets, liabilities, and expenses are apportioned (separated) among regulatory jurisdictions (e.g., "state" and "federal").

**DIRECT TESTIMONY
(RHINEHART)**

1 the appropriate cost of capital to be used by the Commission in evaluating UAF
2 funding requests.

3 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS**
4 **PROCEEDING?**

5 A. The purpose of my testimony is to provide an assessment of Public Service
6 Telephone Company's (Public Service) request for Universal Access Fund (UAF)
7 support and recommend adjustments to that request.

8 **Q. IN THE AGGREGATE, WHAT ADJUSTMENTS DO YOU RECOMMEND TO**
9 **PUBLIC SERVICE'S REQUEST?**

10 A. I recommend that the Commission disallow costs amounting to \$4,200,290 from
11 Public Service's request. Accordingly, I recommend that Public Service receive
12 \$0 of UAF support instead of the \$2,422,757 it requested.

13 **Q. PLEASE BRIEFLY SUMMARIZE YOUR RECOMMENDED ADJUSTMENTS TO**
14 **PUBLIC SERVICE'S REQUEST.**

15 A. First, I adjusted Public Service's request in accordance with the Commission's
16 July 5, 2011 Order setting the cost of equity at 10.625%. Next, I made a
17 \$131,383 adjustment to correct Public Service's accounting for its Allowance for
18 Funds Used During Construction (AFUDC). I then propose a series of
19 disallowances totaling \$942,342 for corporate operations expenses. These
20 proposed disallowances are supported by specific examples of excessive costs
21 incurred by Public Service and by regression analyses that compare Public
22 Service's operations to certain peer groups of companies.

23
24 Next, I recommend disallowances for three other broad categories of operating
25 expenses (\$1,890,468 for plant specific, \$890,051 for plant non-specific and
26 \$258,777 for customer operations expenses). These proposed disallowances are

**DIRECT TESTIMONY
(RHINEHART)**

supported by specific examples of excessive costs incurred by Public Service and by regression analyses that compare Public Service's operations to certain peer groups of companies.

Table 1 below summarizes these adjustments and their effect on Public Service's UAF funding request:

Table 1

Initial Funding Request	\$2,422,757
Return on Equity Adjustment	(87,269)
AFUDC Adjustment	(131,383)
Corporate Operations Disallowance	(942,342)
Plant Specific Expense Disallowance	(1,890,468)
Plant Non-Specific Expense Disallowance	(890,051)
Customer Operations Expense Disallowance	(258,777)
Net Adjusted UAF Revenue Requirement	\$ (1,777,533)

The development of these values is supported by Exhibit DPR-1, Public Service - Tab 1 UAF Earnings Report (ATT View).xlsx. I address each of these categories of expenses and the associated recommended disallowance in more detail below.

II.

ADJUSTMENT TO REFLECT A 10.625% RETURN ON EQUITY (\$87, 269)

Q. WHAT IS THE APPROPRIATE RETURN ON EQUITY FOR THE PURPOSES OF PUBLIC SERVICE'S UAF REQUEST?

A. The 10.625% return on equity the Commission set in its July 5, 2011 Order.

Q. IS THIS THE RETURN ON EQUITY REFLECTED IN PUBLIC SERVICE'S REQUEST?

A. No. Public Service's request reflects a return on equity of 11.20%.

**DIRECT TESTIMONY
(RHINEHART)**

1 **Q. HOW DID YOU ADJUST PUBLIC SERVICE'S UAF REQUEST TO PROPERLY**
2 **REFLECT THE 10.625% RETURN ON EQUITY THE COMMISSION SET?**

3 A. I started with the non-trade secret spreadsheet "Public Service - Tab 1 - UAF
4 Earnings Report June 2010 fili.xlsx" (Tab 1 spreadsheet) filed by Public Service
5 with this Commission on February 11, 2011 which contemplated an 11.20%
6 return on equity. I then input the lower allowed return on equity of 10.625%.²

7 **Q. WHAT IS THE IMPACT ON PUBLIC SERVICE'S UAF REQUEST DUE TO THE**
8 **REDUCED RETURN ON EQUITY?**

9 A. Public Service's UAF requirement decreased by \$87,269.

**III.
COST OF DEBT**

10
11 **Q. HAS THE COMMISSION SET SPECIFIC REQUIREMENTS FOR**
12 **DETERMINATION OF THE COST OF DEBT IN THE CURRENT UAF**
13 **PROCEEDING?**

14
15 A. No, but it has done so in previous UAF proceedings.

16 **Q. HOW HAS THE COMMISSION DETERMINED THE COST OF DEBT IN**
17 **PREVIOUS UAF PROCEEDINGS?**

18 A. In its Tenth and Twelfth Amendatory Orders in Docket No. 17142, the
19 Commission required the use of company-specific cost of debt. The cost of debt
20 was blended on a weighted basis with the Commission-determined cost of equity
21 and the allowed cost of customer deposits (7.00%) to determine the company-
22 specific weighted average cost of capital (WACC), subject to a maximum allowed
23 WACC of 9.00%. The company-specific cost for debt was defined as the prior
24 fiscal year interest payments, net of lenders' patronage dividends, if any, on both
25 the current portion and the non-current portion of long-term debt divided by the

² The revised Tab 1 spreadsheet reflecting AT&T's proposed disallowances will hereafter be referred to as the "AT&T Tab 1 spreadsheet."

**DIRECT TESTIMONY
(RHINEHART)**

1 average of the beginning of period and end of period sum of the current and non-
2 current portions of long-term debt.

3 **Q. SHOULD THE COMMISSION CONTINUE TO USE ITS PAST REQUIREMENTS**
4 **FOR DETERMINING THE COST OF DEBT?**

5 A. Yes. With one clarification, the Commission should apply the requirements
6 regarding cost of debt from the Commission's Tenth and Twelfth Amendatory
7 Orders in Docket No. 17142 in the current proceedings as part of both the Track
8 1 and Track 2 processes, incorporating the recently ordered cost of equity of
9 10.625%.

10 **Q. WHAT IS THE ONE CLARIFICATION YOU RECOMMEND?**

11 A. If a company includes other interest deductions or interest associated with capital
12 leases, then the book value of the underlying loans or leases should also be
13 included in the denominator of the computation of the average cost of debt.

14 **Q. WHAT IS PUBLIC SERVICE'S PROPOSED COST OF DEBT?**

15 A. Public Service's proposed cost of debt is approximately 5.35%.

16 **Q. DID PUBLIC SERVICE ADHERE TO THE COMMISSION'S PAST**
17 **REQUIREMENTS WHEN IT DEVELOPED ITS PROPOSED COST OF DEBT?**

18 A. Yes. Thus, I am not recommending any disallowances related to Public
19 Service's calculation of its cost of debt.

**IV.
ADJUSTMENT TO ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION
(\$131,383)**

20
21 **Q. DID PUBLIC SERVICE INCLUDE AN ALLOWANCE FOR FUNDS USED**
22 **DURING CONSTRUCTION (AFUDC) OFFSET IN ITS UAF REVENUE**
23 **REQUIREMENT DEVELOPMENT?**

24 A. No. Public Service reported \$101,900 in AFUDC in its form M. However, it did
25 not reflect AFUDC in the revenue UAF requirement development. In order to

**DIRECT TESTIMONY
(RHINEHART)**

1 midpoint of the FCC ranges, Public Service's annual UAF revenue requirement
2 would decline by approximately \$1,400,000. Using the upper end to the FCC
3 ranges, Public Service's UAF revenue requirement would decline by about
4 \$1,000,000. Given that this recommendation is a long-term recommendation, it
5 was not included in Table 1 and thus represents an addition to the disallowances
6 contained therein.

**VII.
THE IMPACTS OF UAF FUNDING CAPS**

7
8 **Q. PLEASE SUMMARIZE THE LAST THREE UAF FUNDING REQUESTS AND**
9 **DISBURSEMENTS TO PUBLIC SERVICE ?**

10 **A.** Over the three cycles prior to the present one, Public Service initially requested
11 \$2,242,263 in 2008, \$1,062,635 in 2009, and \$1,120,336 in 2010. The approved
12 payouts were \$1,250,000 in 2008, \$1,000,000 in 2009, and \$1,000,000 in 2010.

13 **Q. GIVEN THAT UAF FUNDING WAS LESS THAN REQUESTED, WERE THERE**
14 **NEGATIVE IMPACTS ON PUBLIC SERVICE'S CASH POSITION?**

15 **A.** Public Service ended 2008 with * * * [REDACTED] * * * in cash and equivalents. At
16 the end of 2009 that value had changed to * * * [REDACTED] * * *. And by the end
17 of 2010, Public Service had * * * [REDACTED] * * * in cash and equivalents. This is
18 explained in more detail in the pre-filed Direct Testimony of AT&T Georgia
19 witness Pete Martin.

**VII.
SUMMARY**

20
21 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

22 **A.** Public Service's request for UAF funding for the fiscal year ended June 30, 2010
23 in the amount of \$2,422,757 is significantly overstated because of excessive

**DIRECT TESTIMONY
(RHINEHART)**

1 spending, inappropriate allocations of cost to non-regulated activities, inclusion of
2 costs that would ordinarily be disallowed in a general rate case, and opaque
3 practices with respect to transactions with affiliates. I recommend that the
4 Commission disallow the entire amount of Public Service's UAF request and that
5 they receive no UAF distribution this year.

6 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

7 **A. Yes.**

EXHIBIT G

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	WC Docket No. 18-60
)	
Iowa Network Access Division)	Transmittal No. 36
Tariff F.C.C. No. 1)	
)	

PROTECTIVE ORDER

Adopted: March 26, 2018

Released: March 26, 2018

By the Chief, Wireline Competition Bureau:

1. The Wireline Competition Bureau (Bureau) of the Federal Communications Commission (Commission) adopts the following Protective Order in connection with the investigation of whether the tariff revisions filed by Iowa Network Access Division d/b/a Aureon (Aureon) to its interstate access Tariff F.C.C. No. 1, Transmittal No. 36,¹ are consistent with the *Aureon Enforcement Order*² and the requirements of the Communications Act of 1934, as amended, as well as the Commission's implementing rules and orders. The Bureau suspended Aureon's revised tariff filing because it concluded "that substantial questions of lawfulness exist regarding how Aureon revised the switched transport rate contained in its proposed tariff revisions."³ In this Protective Order, we set forth procedures to limit access to proprietary or confidential information that may be filed in this proceeding, which, if released to competitors or those with whom the Submitting Party or a Third-Party Interest Holder does business, would allow those persons to gain a significant competitive advantage or an advantage in negotiations. The information Aureon submits, the information we request as relevant and material to the issues raised by the investigation, and any other information submitted in WC Docket No. 18-60 together constitute the record on which the Commission must base its determination. We are mindful of the sensitive nature of some of the information involved, and of the general right of the public, and our desire for the public, to participate in this proceeding in a meaningful way. We find that allowing limited access to competitively sensitive materials pursuant to the procedures set forth in this Protective Order allows the public (through appropriate representatives) to meaningfully participate in this proceeding while also protecting competitively sensitive information from improper disclosure and use. Accordingly, sensibly balancing the public and private interests involved, we conclude that these procedures serve the public interest and adopting them "best conduce[s] to the proper dispatch of the Commission's business and to the ends of

¹ Iowa Network Access Division Tariff F.C.C. No. 1; *see also* Letter from James U. Troup, Counsel for Iowa Network Services, Inc., d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 36 (filed Feb. 22, 2018).

² *See AT&T Corp. v. Iowa Network Services, Inc., d/b/a Aureon Network Services*, Memorandum Opinion and Order, Proceeding Number 17-56, Bureau ID Number EB-17-MD-001, FCC 17-148, 32 FCC Rcd 9677 (2017) (*Aureon Enforcement Order*).

³ *See Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, 2018 WL 1137665 (WCB Feb. 28, 2018) (*Suspension Order*) (suspending the proposed tariff revisions for Aureon's switched transport rate for one day and initiating an investigation of the lawfulness of the proposed rate revision).

justice.”⁴

2. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

“Acknowledgment” means the Acknowledgment of Confidentiality attached as Appendix A hereto.

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his or her clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

“Confidential Information” means information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Commission’s implementing rules.

“Counsel” means In-House Counsel and Outside Counsel of Record.

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

“In-House Counsel” means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“Outside Counsel of Record” or “Outside Counsel” means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term “Outside Counsel of Record” includes any attorney employed by a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

“Outside Consultant” means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term “Outside Consultant” includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

“Outside Firm” means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation, or otherwise, of Outside Counsel or Outside Consultants.

“Participant” means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny, or material comments in this proceeding.

“Redacted Confidential Document” means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) pursuant to paragraphs 5 or 9 of this Protective Order.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend

⁴ 47 U.S.C. § 154(j).

recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 18-60 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 3 of this Protective Order or Sections 0.459 or 0.461 of its rules,⁵ that any such document is not entitled to confidential treatment. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Submitting Party” means a person or entity who submits a Stamped Confidential Document.

“Support Personnel” means employees of a Reviewing Party’s Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information that is submitted under this Protective Order.

3. *Challenge to Designation.* Any person wishing to challenge the designation of a document, portion of a document, or information as Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days, and include a justification for treating the information as Confidential. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.⁶ Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing FOIA.⁷

4. *Submission of Stamped Confidential Documents.* A Submitting Party shall submit to the Secretary’s Office one copy of each Stamped Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document. Each page of the Stamped Confidential Document shall be stamped “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 18-60 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.” The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document submitted, the Submitting Party shall also file through the Commission’s Electronic Comment Filing System (“ECFS”) a copy of the respective Redacted Confidential Document and an accompanying cover letter.⁸ Each Redacted Confidential Document shall have the same pagination as the Stamped Confidential Document from which it is derived. Each page of the Redacted Confidential Document and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” To the extent that any page of the filing contains both Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish between the

⁵ 47 CFR §§ 0.459, 0.461.

⁶ Cf. 47 CFR §§ 0.459(g), 0.461(i).

⁷ See 47 CFR §§ 0.459(h), 0.461.

⁸ If a party is not able to submit a copy of the Redacted Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document with the Secretary’s Office along with the appropriately stamped cover letter.

Confidential Information and the non-confidential information. In addition, two copies of each Stamped Confidential Document and the accompanying cover letter shall be delivered, as directed by Commission staff, to Joseph Price, joseph.price@fcc.gov, (202) 418-1423, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-A133, Washington, D.C. 20554.

5. *Procedure for Obtaining Access to Confidential Information.* Any person other than Support Personnel seeking access to Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

6. *Procedure for Objecting to the Disclosure of Confidential Information to a Potential Reviewing Party.*⁹ Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information.¹⁰ If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information by the Reviewing Party until the objection is resolved.

7. *Review of Stamped Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents of such party at the offices of the party's Outside Counsel of Record. A Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be

⁹ This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential Information pursuant to this Protective Order. The procedure for objecting to specific Confidential Information being reviewed by *any* individual pursuant to the Protective Order (in other words, for requesting that certain information be entirely withheld from review under the Protective Order) is set forth in *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Order, 30 FCC Rcd 10360, 10374, para. 26 (2015). As stated there, where such an objection is timely made, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

¹⁰ An objection ordinarily will first be ruled upon by the Wireline Competition Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential Information shall be made available to the Reviewing Party.

provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 5. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 18.

8. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory, or judicial proceedings. Should the Commission rely upon or otherwise make reference to any Confidential Information in its orders in this proceeding, it will do so by redacting any Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential Information under this Protective Order, as appropriate.

9. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder.

10. *Filings with the Commission.* A party making a filing in this proceeding that contains Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 18-60 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain this legend. The Confidential Filing shall be made under seal and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential Information (the "Redacted Confidential Filing"), to the Commission via ECFS.¹¹ The Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains Confidential Information, only the Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish between the Confidential Information and the non-confidential information. Two copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Joseph Price, joseph.price@fcc.gov, (202) 418-1423, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-A133, Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

11. *Non-Disclosure of Confidential Information.* Except with the prior written consent of the

¹¹ If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

Submitting Party or as provided under this Protective Order, Confidential Information shall not be disclosed further.

12. *Protection of Stamped Confidential Documents and Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information (including Stamped Confidential Documents) is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information is used only as provided in this Protective Order.

13. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.¹²

14. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information to which they have access under this Protective Order; *provided, however,* that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information.

15. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

16. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Stamped Confidential Documents or Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

17. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

18. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and all copies of the same. No material whatsoever containing or

¹² 47 CFR §§ 0.442, 0.461.

derived from Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and copies of the same and Confidential Information shall not be construed to apply to the Commission or its staff.

19. *Questions.* Questions concerning this Protective Order should be addressed to Joseph Price, Joseph.Price@fcc.gov, (202) 418-1423, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-A133, Washington, D.C. 20554, and to Joel Rabinovitz, Joel.Rabinovitz@fcc.gov, (202) 418-0689, Transaction Team, Office of General Counsel.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

APPENDIX A**Acknowledgment of Confidentiality****WC Docket No. 18-60**

I am seeking access to Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to confidential information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information in my possession, in the possession of those who work for me, or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this ____ day of _____, 20__.

[Name]
[Position]
[Firm]
[Telephone]
[Party]

EXHIBIT H

30 FCC Rcd. 13680 (F.C.C.), 30 F.C.C.R. 13680, 2015 WL 8544014
Order and Protective Orders

IN THE MATTER OF INVESTIGATION OF CERTAIN PRICE CAP LOCAL EXCHANGE CARRIER BUSINESS
DATA SERVICES TARIFF PRICING PLANS; SPECIAL ACCESS FOR PRICE CAP LOCAL EXCHANGE
CARRIERS; AT&T CORPORATION PETITION FOR RULEMAKING TO REFORM REGULATION OF
INCUMBENT LOCAL EXCHANGE CARRIER RATES FOR INTERSTATE SPECIAL ACCESS SERVICES

DA 15-1387
WC Docket No. 15-247
WC Docket No. 05-25
RM-10593
Adopted: December 4, 2015
Released: December 4, 2015

*** Start Section

...

*1 By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) grants to the extent described below a motion by AT&T, Verizon, CenturyLink, and Frontier to permit parties in the investigation of certain tariff pricing plans for business data (or special access) services to use the confidential and highly confidential information submitted in the business data services rulemaking proceeding. As part of this order, we issue two protective orders to ensure appropriate access to these data by participants in the tariff investigation. One will protect the confidential and highly confidential data and information that was submitted in response to the Commission's one-time, mandatory data collection in the rulemaking proceeding. The other protective order will protect the balance of the confidential and highly confidential information submitted in the rulemaking proceeding and will also protect any confidential and highly confidential information that parties and commenters submit in the tariff investigation. In addition, the Bureau on its own motion permits the confidential and highly confidential information to be submitted in the tariff investigation to be used by participants in the rulemaking proceeding. That information will be protected by the protective orders previously issued in the rulemaking proceeding.

2. The Commission is conducting a business data services rulemaking proceeding (rulemaking proceeding) in WC Docket No. 05-25, RM-10593 to evaluate the business data services market and consider changes to its rules. As part of the record of that proceeding, parties have submitted, and continue to submit, information about that market, including confidential and highly confidential information. Over the course of the proceeding, the Commission has issued protective orders to ensure the appropriate treatment of such information, which restrict access to, and use of, the data to the rulemaking proceeding.

3.

4. For instance, on December 11, 2012, the Commission adopted the *Data Collection Order* initiating a comprehensive one-time, mandatory data collection to assist the Commission in analyzing competition for business data services in the rulemaking proceeding. The final deadline for responding to the data collection was February 27, 2015. Much of the data collected is competitively sensitive and not publically available. To protect the confidentiality of the data, on October 1, 2014 the Bureau adopted the *Data Collection Protective Order* governing the process for designating, submitting, and accessing these data, and also established that the data would be stored and made available through a Secure Data Enclave (SDE) hosted by the National Organization for Research at the University of Chicago (NORC). The *Data Collection Protective Order* limits use of those data to participation in the rulemaking proceeding.

*2 5.

6. On October 16, 2015, the Bureau opened a separate docket, WC Docket No. 15-247, and released an Order Initiating Investigation and Designating Issues for Investigation into the terms and conditions of certain tariff pricing plans for business data services (tariff investigation) offered by AT&T, CenturyLink, Frontier, and Verizon (incumbent local exchange carriers,

or incumbent LECs). The *Designation Order* directed these four carriers to submit targeted data and information to enable the Commission to assess the reasonableness of the pricing plan terms and conditions under investigation.

7.

8. On October 23, 2015, the incumbent LECs filed a motion to modify the protective orders in the rulemaking proceeding to permit parties in the tariff investigation to use the confidential and highly confidential data submitted in the rulemaking. The carriers assert that the data and information submitted in the rulemaking proceeding subject to the *Data Collection Protective Order* and prior protective orders, while perhaps not sufficient to resolve the issues raised in the tariff investigation, “are clearly *relevant* to the substantive issues raised” in the tariff investigation and “are therefore necessary to the ILECs’ defense.” Specifically, the incumbent LECs contend that “[t]he data are likely to include relevant information about the state of competition in the marketplace, the impact of specific contract terms on such competition, the extent to which competitive providers use contract terms similar to ILECs, as well as potentially other matters.” The incumbent LECs note, however, that the data are subject to protective order restrictions that permit the data only to be used for purposes of the rulemaking proceeding, and therefore request that the protective orders be modified to allow the data to be used in this proceeding.

9.

10. On November 4, 2015, Level 3 filed an opposition to the incumbent LECs’ motion. Level 3 requests that the Bureau deny the motion, asserting that granting it would increase the costs and burdens on parties participating in the tariff investigation and on the Commission, and would risk delaying the resolution of the tariff investigation. Level 3 also argues that the tariff investigation and the rulemaking proceedings address different issues, the tariff investigation is more narrowly focused, and the additional information from the rulemaking proceeding is not necessary to resolve the investigation. On November 12, 2015, the incumbent LECs filed reply comments in support of their motion and in response to Level 3’s opposition.

11.

12. As an initial matter, we note that no party to the rulemaking proceeding and likely to participate in the tariff investigation other than Level 3 objected or otherwise raised any concerns that data in the rulemaking proceeding be permitted to be used by parties in the tariff investigation, as the incumbent LECs request in their motion. We further note that Level 3’s opposition was not timely filed in accordance with our rules. Section 1.45(b) of the Commission’s rules requires that oppositions to a motion be filed within 10 days after the motion is filed. Level 3 acknowledges that it failed to meet the ten day deadline and requests a waiver of the rule, arguing that it filed its opposition within 10 days from the date that the motion appeared on the Electronic Comment Filing System. This argument does not constitute special circumstances that would cause us to find good cause for waiver of our rules. It is the policy of the Commission that extensions of time shall not be routinely granted. Accordingly, we deny Level 3’s waiver request.

*3 1. Nevertheless, we are not persuaded by Level 3’s reasoning, and thus, as a separate and alternative basis for rejecting Level 3’s opposition, we reject its arguments on the merits. First, we are not persuaded that incorporating the rulemaking data into the tariff investigation would unduly increase the costs and burden on parties or delay the tariff investigation proceeding. The incumbent LECs being investigated in the tariff investigation are all parties to the rulemaking proceeding and have already incurred any costs and burdens involved in accessing the mandatory collection data. So has Level 3, which is also a party to the rulemaking proceeding. Indeed, as the incumbent LECs note, they are not requesting a new data collection that would bring additional costs and burdens; they are just seeking that the data already collected be made available to parties in the tariff investigation. As we also noted above, other competitive LECs that are parties to the rulemaking and likely to participate in the tariff investigation did not raise these concerns or otherwise object to the incumbent LECs’ motion. We therefore find that granting this motion will not unnecessarily harm or delay the investigation.

2.

3. In considering the incumbent LECs’ motion, we find that there are data submitted in the rulemaking proceeding that are relevant to the question of the reasonableness of the incumbent LEC pricing plan terms and conditions in the tariff investigation. For example, both incumbent LECs and competitive LECs submitted data related to the terms and conditions of their tariffs or sales agreements for business data services. Although the investigation was initiated as a separate

proceeding and included requests for targeted data needed to evaluate certain pricing plan terms and conditions, the Bureau noted in the *Designation Order* that the “investigation is based on the record generated in the Commission’s special access [rulemaking] proceeding ... and concerns a set of issues that have been and continue to be a principal focus of that proceeding.” The investigation of these issues related to terms and conditions in the tariff pricing plans is therefore an outgrowth of the rulemaking proceeding.

4.

5. Although we concur with the incumbent LECs to the extent described above, we conclude that the most appropriate remedial action is not to modify the protective orders in the rulemaking, as the incumbent LECs request. Rather, we believe that making the data and information from the rulemaking proceeding available more broadly to parties in the tariff investigation would best serve the public interest. Furthermore, based on the relevance of the tariff investigation to the rulemaking proceeding, we believe that that parties in the rulemaking may also benefit from certain data to be submitted in the tariff investigation. Therefore, the Bureau takes the following steps:

- Incorporates the data submitted in response to the Commission’s one-time, mandatory data collection in the rulemaking proceeding, WC Docket No. 05-25, RM-10593, including confidential and highly confidential data, into the record of the tariff investigation, WC Docket No. 15-247, subject to the *Business Data Services Data Collection Protective Order* attached as Appendix A to this Order.

*4 1.

- Incorporates the balance of the present record of the rulemaking, WC Docket No. 05-25, RM-10593, and information that becomes part of the record in this docket in the future, including all other confidential and highly confidential data, into the record of the tariff investigation, WC Docket No. 15-247, subject to the *Tariff Investigation Protective Order* attached as Appendix B to this Order.

- Incorporates the record on a continuing basis that the Bureau develops in the tariff investigation, WC Docket No. 15-247, including confidential and highly confidential data, into the record of the rulemaking proceeding, WC Docket No. 05-25, RM-10593, subject to the *Modified Protective Order* and the *Second Protective Order* in the rulemaking proceeding.

1.

2. As noted above, we adopt two new protective orders in the tariff investigation that will allow interested parties participating in the investigation to access and use the various confidential and highly confidential data and information submitted in the tariff investigation and business data services rulemaking proceeding. Specifically, we adopt as Appendix A to this Order, the *Business Data Services Data Collection Protective Order* in the tariff investigation, which contains procedures to enable parties in the tariff investigation to access the one-time, mandatory business data services data collection hosted in the SDE by NORC and subject to the *Data Collection Protective Order* in the rulemaking docket.

3.

4. In addition, we adopt as Appendix B to this Order, the *Tariff Investigation Protective Order*. This will enable parties in the tariff investigation docket to have access to and make use of the confidential and highly confidential data and information submitted in the rulemaking proceeding. It will also enable parties participating in the tariff investigation to use confidential and highly confidential information to be submitted in the tariff investigation proceeding. Meanwhile, the protective orders in place in the rulemaking will enable parties in that proceeding to access the confidential and highly confidential data that is incorporated from the tariff investigation docket into the rulemaking.

1. Having separate protective orders governing the access and handling of confidential and highly confidential information for each docket will ensure appropriate access to and protections for the information in both proceedings. This approach differs procedurally from the relief requested by the incumbent LECs, which sought a modification of the protective orders in the rulemaking proceedings, but it accomplishes the substance sought by the incumbent LECs. Furthermore, this action is consistent with the Commission’s practice with regard to the use of other data collections. Thus, on this basis, we grant the

incumbent LECs' motion to that extent.

*5 1. Because of the number of parties who have a confidentiality interest in the information collected pursuant to the *Data Collection Order* in the rulemaking proceeding, the *Business Data Services Data Collection Protective Order* adopted today generally follows the procedures set forth in the rulemaking's *Data Collection Protective Order*. All individuals in the tariff investigation requesting access to confidential and highly confidential information that is subject to the *Data Collection Protective Order* in the rulemaking must execute the Acknowledgment of Confidentiality under the *Business Data Services Data Collection Protective Order* and file their Acknowledgments through the Commission Electronic Comment Filing System, or by hand delivery to the Commission, and send a copy to *TariffInvestigation @fcc.gov*. These Acknowledgments do not need to be served on the submitting parties. Staff will post all Acknowledgments once they are received through *TariffInvestigation@fcc.gov* on the following web page: <https://www.fcc.gov/encyclopedia/tariff-investigation-special-access-tariff-discount-plans>. Parties whose confidential and highly confidential information will be made available will then have the opportunity to object to their information being made available to any potential reviewing party. The time for filing such an objection will run only from the date the information is posted on the Commission's web page, not from the date the Acknowledgment may have been filed. Absent the filing of an objection, the requesting party will have access to the confidential and highly confidential information available through the NORC Data Enclave.

1. Individuals in the tariff investigation who wish to have access to and review other confidential and highly confidential information, including confidential and highly confidential information filed in the tariff investigation that is not subject to the *Data Collection Protective Order*, must file their Acknowledgments from the *Tariff Investigation Protective Order* with the Commission and deliver them to counsel for the relevant submitting party and any known third-party interest holders. Submitting parties and third-party interest holders will then have an opportunity to object to disclosure of their data and information to any potential reviewing party pursuant to the standard procedures of the protective order. Absent the filing of an objection, the requesting party will have access to the relevant confidential and highly confidential information.

2.

3. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 201-205, 211, 215, 218, 219, 220, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201-205, 211, 215, 218, 219, 220, 303(r), and 332, Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the *Business Data Services Data Collection Protective Order* and *Tariff Investigation Protective Order* are hereby issued, the motion by AT&T, Verizon, CenturyLink, and Frontier IS GRANTED to the extent described herein, and the Opposition to the Motion by Level 3 IS DENIED.

*6 4.

5. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

6.

7.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief, Wireline Competition Bureau

APPENDIX A

Business Data Services Data Collection Protective Order

APPENDIX B

Tariff Investigation Protective Order

WC Docket No. 15-247

1. *Definitions.* As used herein, capitalized terms not otherwise defined in this Tariff Investigation Protective Order shall have the following meanings:

“Acknowledgment” means the Acknowledgment of Confidentiality attached as the Appendix hereto.

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

“Confidential Information” means information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Commission’s implementing rules.

***16** “Counsel” means...

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... Counsel and Outside Counsel of Record.

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

“Highly Confidential Information” means information that is not otherwise available from publicly available sources; that the Submitting Party has kept strictly confidential; that is subject to protection under FOIA and the Commission’s implementing rules; that the Submitting Party claims constitutes some of its most sensitive business information which, if released to competitors or those with whom the Submitting Party does business, would allow those persons to gain a significant advantage in the marketplace or in negotiations; and that is described in Appendix A to this Tariff Investigation Protective Order, as the same may be amended from time to time. Highly Confidential Information also includes all information that has been submitted and properly designated as Highly Confidential in WC Docket No. 05-25, RM-10593 and incorporated into the record of this proceeding by the Commission.

“In-House Counsel” means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“Outside Counsel of Record” or “Outside Counsel” means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained...

*** Start Section

...n or otherwise, of Outside Counsel or Outside Consultants.

“Participant” means a person or entity that has filed, or has a good faith intention to file, a direct case, an opposition, or material comments in this proceeding.

“Redacted Confidential Document” means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

***17** “Redacted Highly Confidential Document” means a copy of a Stamped Highly Confidential Document where the Highly Confidential Information has been redacted.

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) or Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 2 or 7 of this Tariff Investigation Protective Order.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 3 of this Tariff Investigation Protective Order or sections 0.459 or 0.461 of its rules, that any such document is not entitled to confidential treatment. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Stamped Highly Confidential Document” means any document, or any part thereof, that contains Highly Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 3 of this Tariff Investigation Protective Order or sections 0.459 or 0.461 of its rules, that any such document is not entitled to highly confidential treatment. By designating a document a “Stamped Highly Confidential Document,” a Submitting Party signifies and represents that it contains Highly Confidential Information.

“Submitting Party” means a person or entity who submits a Stamped Confidential Document or a Stamped Highly Confidential Document.

“Support Personnel” means employees of a Reviewing Party’s Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information or Highly Confidential Information that is submitted under this Tariff Investigation Protective Order.

***18 1. Designation of Information as Highly Confidential.** A Submitting Party may designate as Highly Confidential only those types of information described in Appendix A. If a Submitting Party believes that the descriptions contained in Appendix A should be revised, the Submitting Party shall submit a request to amend Appendix A along with a supporting explanation. To the extent the request is granted, an amended Appendix A will be issued. In addition, before a Submitting Party may designate particular documents or information as Highly Confidential, it must receive the written approval of the Commission staff, which, based on the Submitting Party’s representations, will make a preliminary determination whether the proposed designation meets the requirements set forth in this Tariff Investigation Protective Order. The requirement of advance written approval does not apply to information submitted in the data template provided by the Wireline Competition Bureau (Bureau) to facilitate incumbent LECs’ submission of data and information required in their direct cases, which may be designated as Highly Confidential. By designating documents and information as Confidential or Highly Confidential under this Tariff Investigation Protective Order, a Submitting Party also will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission’s rules. Information that has been properly designated as Highly Confidential and submitted in WC Docket No. 05-25, RM-10593 and incorporated into the record of this proceeding by the Commission will retain its designation as Highly Confidential without any further action by the original submitting party.

2. Challenge to Designation. Any person wishing to challenge the designation of a document, portion of a document or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The...

*** Start Section

... such information would be released publicly by the Commission upon an appropriate request under our rules implementing FOIA.

3. *Submission of Stamped Confidential Documents and Stamped Highly Confidential Documents.* A Submitting Party shall submit to the Secretary's Office one copy of each Stamped Confidential Document and each Stamped Highly Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document or Stamped Highly Confidential Document. Each page of the Stamped Confidential Document or Stamped Highly Confidential Document shall be stamped "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION" or "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION", as appropriate. The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document and each Stamped Highly Confidential Document submitted, the Submitting Party shall also file through the Commission's Electronic Comment Filing System ("ECFS") a copy of the respective Redacted Confidential Document or Redacted Highly Confidential Document and an accompanying cover letter. Each Redacted Confidential Document or Redacted Highly Confidential Document shall have the same pagination as the Stamped Confidential Document or Stamped Highly Confidential Document from which it is derived. Each page of the Redacted Confidential Document or Redacted Highly...

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... shall receive only one copy of the document and no more than two additional copies, in any form, shall be made. Application for relief from this restriction against further copying may be made to the Commission, with notice to Counsel of Record for the Submitting Party, which will be granted only for cause.

5. *Procedure for Obtaining Access to Confidential Information and Highly Confidential Information.* Access to Highly Confidential Information (including Stamped Highly Confidential Documents) is limited to Outside Counsel of Record, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Confidential Information or Highly Confidential Information subject to this Tariff Investigation Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Tariff Investigation Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person's reviewing or having access to the Submitting Party's Confidential Information or Highly Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

6. *Procedure for Objecting to the Disclosure of Confidential Information and Highly Confidential Information to a Potential Reviewing Party.* Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information or Highly Confidential Information to a person seeking to review that information pursuant to this Tariff Investigation Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information or Highly Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information or Highly Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the...

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... that it be transmitted electronically. A Reviewing Party may temporarily load onto a computer the information in electronic format. Once loaded onto a computer, any files containing Highly Confidential Information shall be password protected immediately. The Highly Confidential Information may be stored on a computer for the duration of the proceeding. All files containing Highly Confidential Information shall be deleted from the computer no later than proceedings at the Commission are complete. The original disk or other storage medium shall be stored securely and a record kept of any persons given access to it.

9. *Use of Confidential and Highly Confidential Information.* Persons obtaining access to Confidential and Highly Confidential Information under this Tariff Investigation Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to any Confidential or Highly Confidential Information in its orders in this proceeding, it will do so by redacting any Confidential or Highly Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential or Highly Confidential Information under this Tariff Investigation Protective Order, as appropriate.

*21 10. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Confidential Information and Highly Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information and Highly Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder.

11. *Filings with the Commission.* A party making a filing in this proceeding that contains Confidential or Highly Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential or Highly Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Highly Confidential Information shall be clearly marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NO. 15-247 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal, and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, *i.e.*, containing no Confidential or Highly Confidential Information (the "Redacted Confidential Filing") to the Commission via ECFS. The Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as...

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...1 Information and the non-confidential information. Two copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Marvin Sacks, Marvin.Sacks@fcc.gov, (202) 418-2017, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-A260, Washington, D.C. 20554. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests, and any such courtesy copies shall be submitted under seal.

*22 12. *Non-Disclosure of Confidential Information, and Highly Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Tariff Investigation Protective Order, Confidential Information and Highly Confidential Information shall not be disclosed further.

13. *Protection of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information, and Highly Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information and Highly Confidential Information (including Stamped Confidential Documents and Stamped Highly Confidential Documents) is strictly limited as prescribed in this Tariff Investigation Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information and Highly Confidential Information are used only as provided in this Tariff Investigation Protective Order.

14. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential or Highly Confidential Information outside the terms of this Tariff Investigation Protective Order, such a request will be treated in accordance with sections

0.442 and 0.461 of the Commission's rules.

15. *Client Consultation.* Nothing in this Tariff Investigation Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information or Highly Confidential Information to which they have access under this Tariff Investigation Protective Order; *provided, however*, that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information or Highly Confidential Information.

16. *No Waiver of Confidentiality.* Disclosure of Confidential or Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential or Highly Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential or Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential or Highly Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

17. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency issues a subpoena for or orders the production of Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information that a party has obtained under the terms of this Tariff Investigation Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document, Stamped Highly Confidential Document, Confidential Information or Highly Confidential Information.

*23 18. *Violations of the Tariff Investigation Protective Order.* Should a Reviewing Party violate any of the terms of this Tariff Investigation Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential or Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Tariff Investigation Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding. Nothing in this Tariff Investigation Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential or Highly Confidential Information in a manner not authorized by this Tariff Investigation Protective Order.

19. *Termination of Proceeding.* The provisions of this Tariff Investigation Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and Stamped Highly Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential and Highly Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Tariff Investigation Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential or Highly Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential or Highly Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. section 1746 and is subject to 18 U.S.C. section 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Stamped Highly Confidential Documents and copies of the same and Confidential and Highly Confidential Information shall not be construed to apply to the Commission or its staff.

20. *Questions.* Questions concerning this Tariff Investigation Protective Order should be addressed to Joel Rabinovitz, Joel.Rabinovitz@fcc.gov, (202) 418-0689, Office of General Counsel.

***24 FEDERAL COMMUNICATIONS COMMISSION**

Matthew S. DelNero
Chief
Wireline Competition Bureau

APPENDIX B

Attachment 1

Tariff Investigation Protective Order Highly Confidential Information and Documents

As specified in paragraphs 1 and 2 of the Tariff Investigation Protective Order, only information and documents set forth in this Appendix and that otherwise meet the definition of Highly Confidential Information or Highly Confidential Documents may be designated as Highly Confidential. This Appendix will be updated as necessary.

Highly Confidential Information to be Submitted in Incumbent LEC Direct Cases in Response to the Designation Order

- Information included in the data template provided by the Bureau to facilitate incumbent LECs' submission of data and information required in their direct cases.
- Information that discusses the methodology and calculations used by the incumbent LECs to determine the percentage commitment thresholds in the tariff pricing plans under investigation, the business justifications for those thresholds, and information demonstrating a relation between the percentage commitment thresholds and the incumbent LEC's costs.
- Information related to the increase in 2010 of the percentage commitment in CenturyLink's Tariff F.C.C. No. 11 Regional Commitment Program (RCP) from 90 to 95 percent, including information concerning the methodology and calculations used in making this change, cost data explaining this change, and analyses of the impact such change would have on CenturyLink's sales or revenues.
- Information used by incumbent LECs to justify the shortfall penalties in the pricing plans under investigation and data (including cost data), calculations and methodologies used to derive the levels of those shortfall penalties.
- Information used by incumbent LECs to justify the upper percentage thresholds in the pricing plans under investigation, including the business justification for using such thresholds, and data (including cost data and data showing economies of scale), calculations and methodologies used to derive the levels of those upper percentage thresholds.
- Information used by incumbent LECs to justify the overage penalties in the pricing plans under investigation, including the business justification for using such penalties, and data (including cost data and data showing economies of scale), calculations and methodologies used to derive the levels of those penalties.
- Information used by incumbent LECs to justify the early termination fees in the pricing plans under investigation, including the business justification for using such fees, and data (including cost data and data showing economies of scale), calculations and methodologies used to derive the levels of those fees.
- Information related to the discounts, credits, waivers, refunds, or other benefits for purchasers included in commercial agreements between incumbent LECs and competitive LECs that include the sale of TDM-based business data services, including the basis for determining the amount of each such benefit and whether it is related to the amount of non-recurring charges or circuit termination penalties a purchasing competitive LEC would otherwise have had to pay.

Other Highly Confidential Information in Tariff Investigation

***25** Information and documents that meet the description of the following categories and otherwise meet the definition of Highly Confidential Information or Highly Confidential Documents may be designated as Highly Confidential.

- Information that discloses the number, identity, location, type or other characteristics of customers, including wholesale and retail customers, including information identifying specific facilities purchased, levels of demand, amounts paid, durations of commitments, and any fees, charges, or penalties assessed or paid.
- Information that discloses specific aspects of individual agreements between incumbent LECs and purchasers under the tariff pricing plans under investigation or under other relevant pricing plans or arrangements.
- Information that discusses sales, revenue, volume or percentage commitments, cost, market share, or other financial data that is particularly competitively sensitive information.
- Information that discusses aspect of the tariff pricing plan terms and conditions at issue and that may not be expressly sought in the tariff investigation order but are instructive in understanding the operation of those terms and conditions.
- Information that discloses business interpretations, justifications, and applications of tariff or contract provisions, calculations and amounts of discounts, charges, fees, or penalties, and whether these are assessed, waived, or actually paid by customers.
- Information that details the terms and conditions of or strategy related to a Submitting Party's most sensitive business negotiations or contracts (e.g., marketing, service or product agreements).
- Information that provides detailed or granular information about specific network facilities, including types, equivalents, and capacities, whether TDM- or IP-based services.
- Information that discusses in detail current or future plans regarding the transition from TDM- to IP-based services or to compete for a customer or specific groups or types of customers (e.g., retail business or wholesale...

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...).

- Information that details TDM- to IP-technology migration/Ethernet conversion or processing data, including a provider's daily porting capacity (to the extent not otherwise made public).
- Information that discloses the nature or contents of private non-tariffed commercial agreements.
- Detailed information describing or illustrating how a Submitting Party analyzes its competitors, including data, sources and methods used in those analyses, uses of those analyses, and limits on the use of those analyses.

Other Highly Confidential Information from Business Data Services Rulemaking

***26** The following categories of data and information originally sought in the business data services rulemaking will also be considered highly confidential information under this Tariff Investigation Protective Order.

- The locations that companies serve with last-mile facilities and the nature of those facilities (e.g., whether the last-mile facilities consist of conditioned copper loops, DS1 loops, DS3 loops, Ethernet loops, number of fiber strands, actual and potential capacity, whether the facilities are leased on an indefeasible right of use basis or are self-deployed) (*responses to Questions III.A, III. B, and III.E of the Request include information that falls within this category of documents and information*).
- The extent to which companies rely on incumbent local exchange carrier ("ILEC") and non-incumbent LEC last-mile facilities and local transport facilities to provide special access-like services and the nature of those inputs (e.g., the names of suppliers and...

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... *that falls within this category*).

- The factors the companies take into account when deciding what types of channel termination and local transport facilities to lease.
- The types of customers companies serve and the types of special access-type services demanded by those customers.
- The location of individual companies' cell sites and the wire center associated with these cell sites, the nature or type of structure where individual companies' cell sites are placed, the name of the provider that provides a connection to individual companies' cell sites; and the type or capacity of the connections provided to companies' cell sites (*responses to Questions III.B.1 and III.C of the Request includes information that falls within this category*).

APPENDIX B

Attachment 2

Tariff Investigation Protective Order **Acknowledgment of Confidentiality**

WC Docket No. 15-247

I am seeking access to [] only Confidential Information or [] Confidential and Highly Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Tariff Investigation Protective Order in the above-captioned proceeding, and I understand it.

***27** I agree that I am bound by the Tariff Investigation Protective Order and that I shall not disclose or use Stamped Confidential Documents, Stamped Highly Confidential Documents, Confidential Information or Highly Confidential Information except as allowed by the Tariff Investigation Protective Order.

I acknowledge that a violation of the Tariff Investigation Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Tariff Investigation Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential or Highly Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Tariff Investigation Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential or Highly Confidential Information in a manner not authorized by this Tariff Investigation Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Tariff Investigation Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents and Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Tariff Investigation Protective Order and to ensure that there is no disclosure of Confidential Information or Highly Confidential Information in my possession, in the possession of those who work for me or in the possession of other Support Personnel, except as provided in the Tariff Investigation Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information and Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Tariff Investigation Protective Order.

Executed this ____ day of _____, 20__.

[Name]

[Position]

[Firm]

[Telephone]

[Party]

30 FCC Rcd. 13680 (F.C.C.), 30 F.C.C.R. 13680, 2015 WL 8544014

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